Future of Florida's Families Committee

Wednesday, March 28, 2006
10:30 AM – NOON
12 House Office Building

Bill Galvano
Chair

Aaron Bean
Vice Chair

Florida House of Representatives

Future of Florida's Families Committee

Bill Galvano
Chair

AGENDA
March 28, 2006
10:30 AM – NOON
12 HOB

Opening Remarks by Chair Galvano

Consideration of the following bills:

HB 457 – Guardianship by Rep. Sands

HB 459 – Public Records by Rep. Sands

HB 999 CS – Suicide Prevention by Rep. Adams

HB 1047 CS – Parental Relocation with a Child by Rep. Stargel

HB 1099 CS – Court Actions Involving Families by Rep. Planas

HB 1239 – Child Abuse by Rep. Detert

HB 1491 – Children in Foster Care by Rep. A. Gibson

HB 7151 – Adoption by Civil Justice and Rep. Mahon

Consideration of Proposed Committee Bills:

PCB FFF 06-02 – Child Support

PCB FFF 06-05 – Forensic Treatment and Training

Closing Remarks by Chair Galvano

214 House Office Building, 402 South Monroe Street Tallahassee, Florida 32399-1300 (850) 488-8315

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Guardianship
SPONSOR(S): Sands
TIED BILLS: HB 459 **IDEN./SIM. BILLS:** CS/SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Civil Justice Committee			
3) Judiciary Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 457 incorporates the recommendations of the 2003 Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elder Affairs (DOEA). Provisions of the bill address:

- Creating definitions for the terms "audit" and "surrogate guardian," and amending the definition of the term "professional guardian."
- Increasing the dollar threshold required for a court to appoint a guardian ad litem to review a settlement from $15,000 to $50,000 when the settlement involves a minor.
- Creating new reporting requirements related to the appointment of emergency temporary guardians.
- Creating new requirements related to investigations of credit history and background screening for guardians, including background investigations using inkless electronic fingerprints instead of fingerprint cards.
- Decreasing the amount of time during which a guardian must complete the required instruction and education from 1 year to 4 months.
- Emphasizing the importance of an incapacitated person's right to quality of life, clarifying which rights cannot be delegated, reinforcing the significance of the right to marry, and subjecting the right to marry to court approval.
- Creating new restrictions and requirements relating to the appointment of an attorney for an alleged incapacitated person and providing for new requirements for members of examining committees.
- Creating requirements for additional information that must be included in an annual guardianship plan.
- Creating additional requirements relating to proof of payment for expenditures and disbursements made on behalf of a ward.
- Providing clerks of court with the authority to audit simplified and final accountings.
- Creating a new section of law related to the appointment of surrogate guardians.

The bill allows for the imposition of a surcharge on non-criminal traffic infractions and certain criminal violations to fund a county's participation in the public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an $18 surcharge to be added to the fine for all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 to be retained by the clerks of the court as a service fee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases requirements and duties for a number of entities, including guardians, the clerks of court, and the Statewide Public Guardianship Office, with the goal of reducing risk to those being served through the guardianship process. The bill also requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. The Florida Department of Law Enforcement must adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

Ensure lower taxes – The bill allows the imposition of a surcharge on non-criminal traffic infractions and some criminal violations to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an additional surcharge on the fine for all misdemeanors; a portion of which would be used to fund public guardianship programs, with the remaining portion being retained by the clerks of court as a service fee.

Safeguard individual liberty – The bill contains provisions designed to reduce risk to wards and ensure that they are better served by the guardianship process.

Empower families – The bill has the potential to increase the number of individuals able to access the services of a public guardian.

B. EFFECT OF PROPOSED CHANGES:

Guardianship and Public Guardianship

Guardianship is the process designed to protect and exercise the legal rights of individuals with functional limitations that prevent them from being able to make their own decisions when they have not otherwise planned in advance for such a loss of capacity. Those individuals in need of guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic mental illness or other such conditions that may limit function. In such instances, a guardian may be appointed by the court to manage some or all the affairs of another.

Prior to a guardianship being established, it must first be determined that a person lacks the capacity required to make decisions concerning his or her personal and/or financial matters and that no other less restrictive alternatives exist. Upon making such a determination, the court may appoint either a limited guardian[1] or a plenary guardian.[2] In the vast majority of cases that result in guardianship, the court will appoint a family member or close friend of the ward to act as guardian. However, when a family member or close friend is unavailable or unwilling to act as guardian, there are generally two options a court may use to provide assistance to the incapacitated person:

[1] A limited guardian is defined as a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of limited guardian. See section 744.102(8)(a), Florida Statutes.

[2] A plenary guardian is defined as a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. See section 744.102(8)(b), Florida Statutes.

- Appoint a professional guardian to act on the ward's behalf when the ward has assets that may be used to pay for guardianship services provided;[3] or

- Appoint a public guardian in instances where the incapacitated ward does not have enough assets to afford a professional guardian.[4]

Department of Elder Affairs, the Statewide Public Guardianship Office, and the Guardianship Task Force

In order to ensure that Florida's incapacitated residents who are indigent receive appropriate public guardianship services, the 1999 Florida Legislature created the Statewide Public Guardianship Office (SPGO). The SPGO is responsible for establishing local offices of public guardian and ensuring the registration and education of public and professional guardians.[5] Currently, public guardianship services are provided to persons in 22 counties through 15 local offices of public guardian and during 2003, those 15 offices served a total of 1716 wards. In May 2003, the SPGO was transferred under the direct supervision of the Secretary of Elder Affairs.[6]

The 2003 Legislature also created the Guardianship Task Force within DOEA, for the purpose of recommending specific statutory and other changes for achieving best practices in guardianship and for achieving citizen access to quality guardianship services. The final report was submitted to the Secretary of Elder Affairs on January 1, 2005.[7]

Public Guardianship Funding Through Court Filing Fees

Until July 2004, each county was authorized under section 28.241, Florida Statutes, to impose, by ordinance or by special or local law, a fee of up to $15 for each civil action filed, for the establishment, maintenance, or supplementation of a public guardian. However, this authority was rescinded as part of the legislative implementation of Constitutional Revision 7 to Article V of the State Constitution. Revision 7, adopted by the voters in 1998, required the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. As part of this implementation, all filing fees for trial and appellate proceedings were regulated by the state, with a portion to revert directly to the Department of Revenue to be used to fund court proceedings. However, the $15 allowable for additional expenses that counties were formerly authorized to implement in order to fund public guardianship programs was also removed.[8]

HB 457

The bill incorporates the recommendations of the Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elder Affairs. Specifically, the bill contains provisions related to the following:

Definitions

The bill defines the term "audit" for purposes of Chapter 744 as a systematic review of financial documents in accordance with generally accepted auditing standards. The term "surrogate guardian" is defined as a professional guardian who is designated by a guardian to exercise the powers of the guardian if the guardian is unavailable to act. A change to the definition of professional guardian

[3] See sections 744.102(16) and 744.334, Florida Statutes.
[4] See section 744.703, Florida Statutes.
[5] See section 744.7021, Florida Statutes and Chapter 99-227, Laws of Florida.
[6] See Chapter 2003-57, Laws of Florida.
[7] See Chapter 2003-57, Laws of Florida.
[8] See Chapter 2003-402, Laws of Florida.

clarifies that professional guardians do not have to receive compensation in order to serve as professional guardians as long as they meet all statutory requirements.

Natural Guardians

The bill clarifies that if a parent of a minor child dies, the surviving parent remains as the sole natural guardian even if he or she remarries. Regarding claims or causes of action on behalf of minor children, the bill clarifies that natural guardians are authorized to make certain financial decisions for minor children when the aggregate amount is not more than $15,000. Natural guardians are precluded from using a ward's property for the guardian's benefit or to satisfy the guardian's support obligation to the ward without court approval.

Guardian ad Litem Appointments for Minors

- The court is authorized to appoint a guardian ad litem to represent the minor's interest, before approving a settlement in which a minor has a damages claim in which the gross settlement is more than $15,000, and the court is required to appoint a guardian ad litem where the gross settlement is $50,000 or more;
- The guardian ad litem appointment is required to be without the necessity of bond or notice;
- The duty of the guardian ad litem is to protect the minor's interests in accordance with Florida Probate Rules;
- A court is not required to appoint a guardian ad litem if a guardian has previously been appointed who does not have an adverse interest to the minor; however, a court may appoint a guardian ad litem if the court believes it necessary to protect the minor's interests; and
- The court is required to award reasonable fees and costs to the guardian ad litem, unless waived, to be paid against the gross proceeds of the settlement.

Emergency Temporary Guardians

- The bill increases the initial length of time of an emergency temporary guardianship from 60 days to 90 days;
- An emergency temporary guardian is a guardian for the property and, as such, must include certain information related to accounting and inventory in the final report;
- In instances where the emergency temporary guardian is a guardian of the person, the final report must include such information as residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward; and
- An emergency temporary guardian is required to file a final report within 30 days upon expiration of the guardianship and a copy of the final report must be provided to the successor guardian and the ward.

Standby Guardianships

- The court may appoint a standby guardian upon petition by the natural guardians or a legally appointed guardian;
- The court may also appoint an alternate if the standby guardian does not serve or ceases to serve;
- The court must serve a notice of hearing on the parents, next of kin, and any currently serving guardian unless notice is waived in writing or by the court for good cause shown; and
- The standby guardian must submit to a credit and criminal investigation.

Credit and Criminal Background Checks

- If a credit or criminal investigation is required, the court must consider investigation results before the appointment of a guardian;
- The court may require a credit investigation at any time;
- The clerk of the court is required to keep a file on each appointed guardian, retain investigation documents, and is required to collect up to $7.50 from each professional guardian for handling and processing of files;
- The court and the Statewide Public Guardianship Office are required to accept the satisfactory completion of a criminal background investigation by any method stated in these provisions;
- A guardian complies with background requirements by paying for and undergoing an electronic fingerprint criminal history check or a criminal history record check using a fingerprint card. The results of the criminal history check shall be immediately forwarded to the clerk who will maintain the results in the guardian's file, and the Statewide Public Guardianship Office;
- A professional guardian is required to complete and pay for a level 2 background screening every five years, a level 1 background screening every two years, unless screened using inkless electronic fingerprinting equipment, and a credit history investigation at least once every two years after appointment;
- Effective December 15, 2006, all fingerprints electronically submitted to Department of Law Enforcement shall be retained as provided by rule and entered into the statewide automated fingerprint identification system. The Department of Law Enforcement shall search all arrest fingerprint cards against those in the system, reporting any matches to the clerk of the court;
- The clerk of the court is required to forward any arrest records to the Statewide Public Guardianship Office within five days upon receipt;
- Guardians who elect to participate in electronic criminal history checks are required to pay a fee, unless the clerk of the court absorbs the fee;
- The Statewide Public Guardianship Office is required to adopt a rule detailing acceptable methods for completing a credit investigation, and may set a fee of up to $25 to reimburse costs; and
- The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal history check of a public or professional guardian.

Procedures to Determine Incapacity

- Attorneys representing the ward must be appointed from an attorney registry compiled by the circuit's Article V indigent services committee and must, effective January 1, 2007, have completed a minimum of 8 hours education in guardianship;
- A member appointed is precluded from subsequently being appointed as a guardian of the person;
- Each member must file an affidavit certifying completion of course requirements or that they will be completed within four months upon appointment;
- The initial training and continuing education program must be established by the Statewide Public Guardianship Office, in conjunction with other listed entities; and
- The committee's report must include the names of all persons present during the member's examination, the signature of each member, and the date and time each member examined the alleged incapacitated person.

Voluntary Guardianships

- A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward no more than 90 days before the annual report is filed with the court, which certifies that the ward is competent to understand the nature of the guardianship and is also aware of the ward's authority to delegate powers to the voluntary guardian; and
- Where a ward files a notice of termination of guardianship with the court, the notice must include a certificate from a licensed physician who has examined the ward no more than 30 days before the ward filed the notice, certifying that the ward is competent to understand the significance of the termination.

Surrogate Guardians

- A guardian may designate a surrogate guardian if the guardian is unavailable, but the surrogate must be a professional guardian;
- A guardian must file a petition with the court requesting permission to designate a surrogate;
- Upon approval, the court's order must contain certain information, including the duration of appointment, which is up to 30 days, extendable for good cause; and
- The guardian is liable for the acts of the surrogate guardian and may terminate the surrogate's authority by filing a written notice with the court.

Other Provisions

- An incapacitated person retains the right to receive necessary services and rehabilitation necessary to maximize the quality of life and the right to marry unless the right to enter into a contract has been removed, in which case the court must approve the right to marry;
- Professional and public guardians are required to ensure that each of the guardian's wards is personally visited by the guardian or staff at least once every calendar quarter, unless appointed only as a guardian of the property. During the visit, the guardian or staff person must assess the ward's physical appearance and condition, current living situation, and need for additional services;
- The annual guardianship report is required to be filed by April 1, rather than within 90 days after the end of the calendar year, which is current law;
- Annual guardianship plans for minors must include information about the minor's residence, medical and mental health conditions, and treatment and rehabilitation needs of the minor, and the minor's educational progress;
- Property that is under the guardian's control, including any trust of which the ward is a beneficiary but not under the control or administration of the guardian, is not subject to annual accounting requirements;
- If the ward dies, the guardian must file a final report with the court within 45 days after being served with letters of administration or curatorship, rather than the prompt filing requirement under current law; and
- Regarding the discharge of a guardian named as a personal representative for the ward's estate, any interested person may file a notice of a hearing on any objections filed by the beneficiaries of the ward's estate. If a notice is not served within 90 days after filing, objections are considered abandoned.

C. SECTION DIRECTORY:

Section 1. Amends s. 744.102, F.S., relating to definitions.

Section 2. Amends s. 744.1083, F.S., relating to professional guardian registration.

Section 3. Amends s. 744.301, F.S., relating to natural guardians.

Section 4. Creates s. 744.3025, F.S., relating to claims of minors.

Section 5. Amends s. 744.3031, F.S., relating to emergency temporary guardianship.

Section 6. Amends s. 744.304, F.S., relating to standby guardianship.

Section 7. Amends s. 744.3115, F.S., relating to advance directives for health care.

Section 8. Amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 9. Amends s. 744.3145, F.S., relating to guardian education requirements.

Section 10. Amends s. 744.3215, F.S., relating to rights of persons determined to be incapacitated.

Section 11. Amends s. 744.331, F.S., relating to procedures to determine incapacity.

Section 12. Amends s. 744.341, F.S., relating to voluntary guardianship.

Section 13. Amends s. 744.361, F.S., relating to powers and duties of a guardian.

Section 14. Amends s. 744.365, F.S., relating to verified inventory.

Section 15. Amends s. 744.367, F.S., relating to the duty to file an annual guardianship report.

Section 16. Amends s. 744.3675, F.S., relating to the annual guardianship plan.

Section 17. Amends s. 744.3678, F.S., relating to annual accounting.

Section 18. Amends s. 744.3679, F.S., relating to simplified accounting procedures in certain cases.

Section 19. Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.

Section 20. Amends s. 744.441, FS., relating to the powers of a guardian upon court approval.

Section 21. Creates s. 744.442, F.S., relating to the delegation of authority.

Section 22. Amends s. 744.464, F.S., relating to the restoration to capacity.

Section 23. Amends s. 744.474, F.S., relating to reasons for removing a guardian.

Section 24. Amends s. 744.511, F.S., relating to the accounting upon removal of a guardian.

Section 25. Amends s. 744.527, F.S., relating to final reports and application for discharge of guardian.

Section 26. Amends s. 744.528, F.S., relating to the discharge of a guardian named as a personal representative.

Section 27. Amends s. 744.708, F.S., relating to reports and standards.

Section 28. Amends s. 765.101, F.S., relating to definitions.

Section 29. Amends s. 28.345, F.S., relating to the exemption from court-related fees and charges.

Section 30. Amends s. 121.091, F.S., relating to benefits payable.

Section 31. Amends s. 121.4501, F.S., relating to Public Employee Optional Retirement Program.

Section 32. Amends s. 709.08, F.S., relating to durable power of attorney.

Section 33. Amends s. 744.1085, F.S., relating to the regulation of professional guardians.

Section 34. Reenacts s. 117.107, F.S., relating to prohibited acts.

Section 35. Amends s. 318.18, F.S., relating to amount of civil penalties.

Section 36. Creates s. 938.065, F.S., relating to additional costs for public guardianship programs.

Section 37. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons involved in guardianship will be required to have additional training. These persons may also have to spend more time drafting reports regarding a person's capacity. The cost of these reports may be borne by the ward. Guardians will have to visit their wards more frequently.

D. FISCAL COMMENTS:

The bill allows for the imposition of a $15 surcharge on non-criminal traffic infractions and criminal violations listed in section 318.17, Florida Statutes, to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an $18 surcharge on all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 going to the clerks of court as a service fee.

According to the Department of Highway Safety and Motor Vehicles in 2004 the traffic statistics for criminal traffic, non-criminal moving, and non-moving infractions were as follows:

Total Violations: 4,418,401
Guilty: 434,691
Pending Disposition: 563,948

Adjudication withheld by Judge: 515,594
Adjudication withheld by Clerk: 541,581

Guilty: $6,520,365
Adjudication withheld by Judge: $7,733,910
Total: $14,254,275

These numbers assume 100% collection, that each county would utilize this mechanism for public guardianship funding, and that fines are imposed for each adjudication withheld.

The department estimates there is a minimum of 5,000 to 10,000 indigent and incapacitated persons per year that require the services of a public guardian. Currently, public guardians serve slightly over 1,700 of those individuals. The majority of the state does not have access to a public guardian, and even those areas that do have a public guardian, services are not readily available because the current office is at capacity. These provisions replace the public guardianship funding that was removed in July 2004 in implementing Article V revisions.

The number of misdemeanors where a fine would be imposed for 2004 was:191,432. Multiplying that figure by $15 (not the full $18) results in a possible $2,871,480 for public guardianship. Again, this assumes 100% collection. The clerks of court would retain $574,296 in service fees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. It also requires the Florida Department of Law Enforcement to adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to guardianship; amending s. 744.102, F.S.; defining the terms "audit" and "surrogate guardian"; amending s. 744.1083, F.S.; providing that the Statewide Public Guardianship Office need not review credit and criminal investigations from a college or university before registering the institution as a professional guardian; amending s. 744.301, F.S.; providing that in the event of death, the surviving parent is the sole natural guardian of a minor; prohibiting a natural guardian from using the property of the ward for the guardian's benefit without a court order; creating s. 744.3025, F.S.; authorizing a court to appoint a guardian ad litem to represent a minor's interest in certain claims that exceed a specified amount; requiring a court to appoint a guardian ad litem to represent a minor's interest in certain claims that exceed a specified amount; providing that a court need not appoint a guardian ad litem under certain circumstances; requiring a court to award reasonable fees and costs to the guardian ad litem; amending s. 744.3031, F.S.; increasing the time an emergency temporary guardian may serve; increasing the time of an extension; requiring an emergency temporary guardian to file a final report; providing for the contents of the final report; amending s. 744.304, F.S.; specifying the persons who may file a petition for a standby guardian; requiring that notice of the appointment hearing be served on the ward's next of kin; clarifying

when a standby guardian may assume the duties of guardian; requiring that each standby guardian submit to credit and criminal background checks; amending s. 744.3115, F.S.; defining the term "health care decision"; amending s. 744.3135, F.S.; providing procedures for completing a guardian's criminal background investigation; authorizing a guardian to use inkless electronic fingerprinting equipment that is available for background investigations of public employees; providing that a guardian need not be rescreened if he or she uses certain inkless electronic fingerprinting equipment; providing for fees; requiring the Statewide Public Guardianship Office to adopt a rule for credit investigations of guardians; amending s. 744.3145, F.S.; reducing the time in which a guardian must complete the education courses; amending s. 744.3215, F.S.; providing that an incapacitated person retains the right to receive services and rehabilitation necessary to maximize the quality of the person's life; revising provisions relating to rights that may be removed from a person determined incapacitated; amending s. 744.331, F.S.; requiring that the court appoint an attorney for an alleged incapacitated person from a specified registry; requiring attorneys to complete certain training programs; providing that a member of the examining committee may not be related to or associated with certain persons; prohibiting a person who served on an examining committee from being appointed as the guardian; requiring each member of an examining committee to file an affidavit

stating that he or she has completed or will timely complete the mandatory training; providing for training programs; requiring each member to report the time and date that he or she examined the person alleged to be incapacitated, the names of all persons present during the examination, and the response and name of each person supplying an answer posed to the examinee; providing for an award of attorney's fees; amending s. 744.341, F.S.; requiring the voluntary guardian to include certain information in the annual report; requiring that certain specified information be included in the notice to terminate a voluntary guardianship; amending s. 744.361, F.S.; requiring a professional guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; providing an exemption; amending s. 744.365, F.S.; requiring that the verified inventory include information on any trust to which a ward is a beneficiary; amending s. 744.367, F.S.; requiring that the annual report of the guardian filing on a calendar-year basis be filed on or before a specified date; exempting all minor wards from service of the annual report; amending s. 744.3675, F.S.; requiring that the annual guardianship plan include information on the mental condition of the ward; providing for an annual guardianship plan for wards who are minors; amending s. 744.3678, F.S.; providing that property of the ward which is not under the control of the guardian, including

certain trusts, is not subject to annual accounting; requiring certain documentation for the annual accounting; amending s. 744.3679, F.S.; removing a provision prohibiting the clerk of the court from having responsibility for monitoring or auditing accounts in certain cases; amending s. 744.368, F.S.; requiring that the verified inventory and the accountings be audited within a specified time period; amending s. 744.441, F.S.; requiring the court to retain oversight for assets of a ward transferred to a trust; creating s. 744.442, F.S.; providing that a guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act; requiring the surrogate guardian to be a professional guardian; providing the procedures to be used in appointing a surrogate guardian; providing the duties of a surrogate guardian; requiring the guardian to be liable for the acts of the surrogate guardian; authorizing the guardian to terminate the services of the surrogate guardian by filing a written notice of the termination with the court; amending s. 744.464, F.S.; removing the state attorney from the list of persons to be served a notice of a hearing on restoration of capacity; removing a time limitation on the filing of a suggestion of capacity; amending s. 744.474, F.S.; revising provisions relating to removal of a guardian who is not a family member; revising provisions relating to removal of a guardian upon a showing that removal of the current guardian is in the best interest of

the ward; amending s. 744.511, F.S.; providing that a ward who is a minor need not be served with the final report of a removed guardian; amending s. 744.527, F.S.; providing that final reports for a deceased ward be filed at a specified time; amending s. 744.528, F.S.; providing for a notice of the hearing for objections to a report filed by a guardian; amending s. 744.708, F.S.; requiring a public guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; amending s. 765.101, F.S.; redefining the term "health care decision" to include informed consent for mental health treatment services; amending s. 28.345, F.S.; revising provisions relating to exemptions from paying court-related fees and charges; amending ss. 121.091, 121.4501, 709.08, and 744.1085, F.S.; conforming cross-references; reenacting s. 117.107(4), F.S., relating to prohibited acts of a notary public, to incorporate the amendment made to s. 744.3215, F.S., in a reference thereto; amending s. 318.18, F.S.; authorizing a county to impose a surcharge on certain civil penalties to fund local participation in the public guardianship program; prescribing prerequisites for imposing the surcharge; providing a limit on the surcharge; creating s. 938.065, F.S.; requiring that a specified surcharge be assessed against all misdemeanor offenses; providing that the clerk of the court may retain a service charge; directing that the funds collected be used to fund public guardianship

programs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.102, Florida Statutes, is amended to read:

744.102 Definitions.--As used in this chapter, the term:

(1) "Attorney for the alleged incapacitated person" means an attorney who represents the alleged incapacitated person. The ~~Such~~ attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.

(2) "Audit" means a systematic review of financial documents with adherence to generally accepted auditing standards.

(3) ~~(2)~~ "Clerk" means the clerk or deputy clerk of the court.

(4) ~~(3)~~ "Corporate guardian" means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.

(5) ~~(4)~~ "Court" means the circuit court.

(6) ~~(5)~~ "Court monitor" means a person appointed by the court under ~~pursuant to~~ s. 744.107 to provide the court with information concerning a ward.

(7) ~~(6)~~ "Estate" means the property of a ward subject to administration.

(8) ~~(7)~~ "Foreign guardian" means a guardian appointed in another state or country.

(9)~~(8)~~ "Guardian" means a person who has been appointed by the court to act on behalf of a ward's person or property, or both.

(a) "Limited guardian" means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) "Plenary guardian" means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

(10)~~(9)~~ "Guardian ad litem" means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.

(11)~~(10)~~ "Guardian advocate" means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12. As used in this chapter, the term does not apply to a guardian advocate appointed for a person determined incompetent to consent to treatment under s. 394.4598.

(12)~~(11)~~ "Incapacitated person" means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the

essential health and safety requirements of the ~~such~~ person.

(a) To "manage property" means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(b) To "meet essential requirements for health or safety" means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

(13) ~~(12)~~ "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(14) ~~(13)~~ "Next of kin" means those persons who would be heirs at law of the ward or alleged incapacitated person if the ~~such~~ person were deceased and includes the lineal descendants of the ~~such~~ ward or alleged incapacitated person.

(15) ~~(14)~~ "Nonprofit corporate guardian" means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(16) ~~(15)~~ "Preneed guardian" means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. 744.3045.

(17) ~~(16)~~ "Professional guardian" means any guardian who ~~receives or~~ has at any time ~~received compensation for services~~ rendered services to three or more ~~than two~~ wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a

professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

(18) ~~(17)~~ "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(19) ~~(18)~~ "Standby guardian" means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

(20) "Surrogate guardian" means a guardian designated according to s. 744.442.

(21) ~~(19)~~ "Totally incapacitated" means incapable of exercising any of the rights enumerated in s. 744.3215(2) and (3).

(22) ~~(20)~~ "Ward" means a person for whom a guardian has been appointed.

Section 2. Subsection (10) of section 744.1083, Florida Statutes, is amended to read:

744.1083 Professional guardian registration.--

(10) A state college or university or an independent college or university described in s. 1009.98(3)(a), may, but is not required to, register as a professional guardian under this section. If a state college or university or independent college or university elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) ~~subsection (3)~~ do not apply and the registration must include only the name, address, and employer identification

number of the registrant.

Section 3. Section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.--

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she ~~the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent~~ remarries. If the marriage between the parents is dissolved, the natural guardianship belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the child is awarded. If the parents are given joint custody, then both ~~shall~~ continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) ~~The~~ Natural ~~guardian or~~ guardians are authorized, on behalf of any of their minor children, to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children;

(b) Collect, receive, manage, and dispose of the proceeds of any such settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,

without appointment, authority, or bond, when the amounts received, in the aggregate, do ~~amount involved in any instance does~~ not exceed $15,000.

(3) All instruments executed by a natural guardian for the benefit of the ward under the powers specified ~~provided for~~ in subsection (2) shall be binding on the ward. The natural guardian may not, without a court order, use the property of the ward for the guardian's benefit or to satisfy the guardian's support obligation to the ward.

~~(4)(a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds $15,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a minor equals or exceeds $25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a~~

~~guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.~~

~~(b) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.~~

Section 4. Section 744.3025, Florida Statutes, is created to read:

744.3025 Claims of minors.--

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds $15,000.

(b) The court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds $50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor. A court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor.

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

Section 5. Subsection (3) of section 744.3031, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

744.3031 Emergency temporary guardianship.--

(3) The authority of an emergency temporary guardian expires 90 ~~60~~ days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 ~~30~~ days upon a showing that the emergency conditions still exist.

(8)(a) An emergency temporary guardian shall file a final report no later than 30 days after the expiration of the emergency temporary guardianship.

(b) An emergency temporary guardian is a guardian for the property. The final report must consist of a verified inventory of the property, as provided in s. 744.365, as of the date the letters of emergency temporary guardianship were issued, a final

accounting that gives a full and correct account of the receipts and disbursements of all the property of the ward over which the guardian had control, and a statement of the property of the ward on hand at the end of the emergency temporary guardianship. If the emergency temporary guardian becomes the successor guardian of the property, the final report must satisfy the requirements of the initial guardianship report for the guardian of the property as provided in s. 744.362.

(c) If the emergency temporary guardian is a guardian of the person, the final report must summarize the activities of the temporary guardian with regard to residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward to the extent of the authority granted to the temporary guardian in the letters of guardianship. If the emergency temporary guardian becomes the successor guardian of the person, the report must satisfy the requirements of the initial report for a guardian of the person as stated in s. 744.362.

(d) A copy of the final report of the emergency temporary guardianship shall be served on the successor guardian and the ward.

Section 6. Section 744.304, Florida Statutes, is amended to read:

744.304 Standby guardianship.--

(1) Upon a petition by the natural guardians or a guardian appointed under s. 744.3021, the court may appoint a standby guardian of the person or property of a minor ~~or consent of both parents, natural or adoptive, if living, or of the surviving~~

~~parent, a standby guardian of the person or property of a minor may be appointed by the court~~. The court may also appoint an alternate to the guardian to act if the standby guardian does not serve or ceases to serve after appointment. Notice of a hearing on the petition must be served on the parents, natural or adoptive, and on any guardian currently serving unless the notice is waived in writing by them or waived by the court for good cause shown ~~shall renounce, die, or become incapacitated after the death of the last surviving parent of the minor~~.

(2) Upon petition of a currently serving guardian, a standby guardian of the person or property of an incapacitated person may be appointed by the court. Notice of the hearing shall be served on the ward's next of kin.

(3) The standby guardian or alternate shall be empowered to assume the duties of guardianship ~~his or her office~~ immediately on the death, removal, or resignation of the guardian of a minor, or on the death or adjudication of incapacity of the last surviving natural guardian ~~or adoptive parent~~ of a minor, or upon the death, removal, or resignation of the guardian for an adult. The~~; however, such a~~ guardian of the ward's property may not be empowered to deal with the ward's property, other than to safeguard it, before ~~prior to~~ issuance of letters of guardianship. If the ward ~~incapacitated person~~ is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the standby guardian, unless the ward has previously been found to be incapacitated.

(4) Within 20 days after assumption of duties as guardian,

a standby guardian shall petition for confirmation of appointment. If the court finds the standby guardian to be qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and 744.312, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with s. 744.347, ~~and~~ shall file a bond, and shall submit to a credit and criminal investigation as set forth in s. 744.3135, if required. Letters of guardianship must then be issued in the manner provided in s. 744.345.

(5) After the assumption of duties by a standby guardian, the court shall have jurisdiction over the guardian and the ward.

Section 7. Section 744.3115, Florida Statutes, is amended to read:

744.3115 Advance directives for health care.--In each proceeding in which a guardian is appointed under this chapter, the court shall determine whether the ward, prior to incapacity, has executed any valid advance directive under ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the surrogate. Pursuant to the grounds listed in s. 765.105, the court, upon its own motion, may, with notice to the surrogate and any other appropriate parties, modify or revoke the authority of the surrogate to make health care decisions for the ward. For purposes of this section, the term "health care decision" has the same meaning as in s. 765.101.

Section 8. Section 744.3135, Florida Statutes, is amended

to read:

744.3135 Credit and criminal investigation.--

(1) The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04. If a credit or criminal investigation is required, the court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening as set forth in s. 435.03. The court shall consider the results of any investigation when reappointing a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian must pay the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.

(2) The court and the Statewide Public Guardianship Office shall accept the satisfactory completion of a criminal background investigation by any method described in this subsection. A guardian satisfies the requirements of this section by undergoing:

(a) An inkless electronic fingerprint criminal background investigation. A guardian may use any inkless electronic

fingerprinting equipment used for criminal background investigations of public employees. The guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal background investigation. The agency that operates the equipment used by the guardian may charge the guardian an additional fee, not to exceed $10, for the use of the equipment. The agency completing the investigation must immediately send the results of the criminal background investigation to the clerk of the court and the Statewide Public Guardianship Office. The clerk of the court shall maintain the results in the guardian's file and shall make the results available to the court; or

(b) A criminal background investigation using a fingerprint card. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the ~~Florida~~ Department of Law Enforcement for processing. ~~The professional guardian shall pay to the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.~~ The results of the fingerprint card background investigations ~~checks~~ shall be forwarded to the clerk of the court who shall maintain the results in the guardian's ~~a guardian~~ file and ~~shall~~ make the results available to the court and the Statewide Public Guardianship Office.

(3)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a

ward, must complete, at his or her own expense, a level 2 background screening as set forth in s. 435.04 before and at least once every 5 years after the date the guardian is appointed. A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 1 background screening as set forth in s. 435.03 at least once every 2 years after the date the guardian is appointed. However, a person is not required to resubmit fingerprints for a criminal background investigation if he or she has been screened using inkless electronic fingerprinting equipment that is capable of notifying the clerk of the court of any crime charged against the person in this state or elsewhere, as appropriate.

(b) Effective December 15, 2006, all fingerprints electronically submitted to the Department of Law Enforcement under this section shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered in the Criminal Justice Information Program under s. 943.051.

(c) Effective December 15, 2006, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be

reported as soon as possible to the clerk of the court. The clerk of the court must forward any arrest record received for a professional guardian to the Statewide Public Guardianship Office within 5 days. Each guardian who elects to undergo an inkless electronic background investigation shall participate in this search process by paying an annual fee to the clerk of the court and by informing the clerk of the court of any change in the status of his or her guardianship appointment. The amount of the annual fee to be imposed upon each clerk of the court for performing these searches and the procedures for the retention of guardian fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. The fee may be borne by the clerk of the court or the guardian, but may not exceed $10.

(4)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's appointment.

(b) The Statewide Public Guardianship Office shall adopt a rule detailing the acceptable methods for completing a credit investigation under this section. If appropriate, the Statewide Public Guardianship Office may administer credit investigations. If the office chooses to administer the credit investigation, the office may adopt a rule setting a fee, not to exceed $25, to reimburse the costs associated with the administration of a credit investigation.

(5) The Statewide Public Guardianship Office may inspect

at any time the results of any credit or criminal investigation of a public or professional guardian conducted under this section. The office shall maintain copies of the credit or criminal results in the guardian's registration file. If the results of a credit or criminal investigation of a public or professional guardian have not been forwarded to the Statewide Public Guardianship Office by the investigating agency, the clerk of the court shall forward copies of the results of the investigations to the office upon receiving them. ~~If credit or criminal investigations are required, the court must consider the results of the investigations before appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must resubmit, at their own expense, to an investigation of credit history, and undergo level 1 background screening as required under s. 435.03, at least every 2 years after the date of their appointment. At any time, the court may require guardians or their employees to submit to an investigation of credit history and undergo level 1 background screening as required under s. 435.03. The court must consider the results of these investigations in reappointing a guardian.~~

~~(1) Upon receiving the results of a credit or criminal investigation of any public or professional guardian, the clerk of the court shall forward copies of the results to the Statewide Public Guardianship Office in order that the results may be maintained in the guardian's registration file.~~

(6)~~(2)~~ The requirements of this section do ~~does~~ not apply to a professional guardian, or to the employees of a

professional guardian, that ~~which~~ is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 9. Subsection (4) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.--

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months ~~1 year~~ after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

Section 10. Paragraph (i) of subsection (1) and subsection (2) of section 744.3215, Florida Statutes, are amended to read:

744.3215 Rights of persons determined incapacitated.--

(1) A person who has been determined to be incapacitated retains the right:

(i) To receive ~~necessary~~ services and rehabilitation necessary to maximize the quality of life.

(2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

(a) To marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval.

(b) To vote.

(c) To personally apply for government benefits.

(d) To have a driver's license.

(e) To travel.

(f) To seek or retain employment.

Section 11. Subsections (2), (3), and (7) of section 744.331, Florida Statutes, are amended to read:

744.331 Procedures to determine incapacity.--

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

(a) When a court appoints an attorney for an alleged incapacitated person, the court must appoint an attorney who is included in the attorney registry compiled by the circuit's Article V indigent services committee. Appointments must be made on a rotating basis, taking into consideration conflicts arising under this chapter.

(b) ~~(a)~~ The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court, subject to court approval.

(c) ~~(b)~~ Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(d) Effective January 1, 2007, an attorney seeking to be appointed by a court for incapacity and guardianship proceedings

must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years.

(3) EXAMINING COMMITTEE.--

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion, including a professional guardian. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another, ~~or~~ with the petitioner, with counsel for the petitioner or the proposed guardian, or with the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or

furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of the examining committee.

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the Statewide Public Guardianship Office, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and

the Real Property, Probate and Trust Law sections of The Florida Bar; the Florida State Guardianship Association; and the Florida Guardianship Foundation. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(e) ~~(b)~~ Each member of the examining committee shall examine the person. Each ~~The~~ examining committee member must ~~shall~~ determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each ~~the~~ examining committee member must ~~shall~~ have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must ~~shall~~ submit a report within 15 days after appointment.

(f) ~~(c)~~ The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by the examining committee as part of its written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;

2. A mental health examination; and

3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g) ~~(d)~~ The committee's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.

2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.

3. The results of the comprehensive examination and the committee members' assessment of information provided by the attending or family physician, if any.

4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.

5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.

6.~~5.~~ The signature of each member of the committee and the date and time that each member conducted his or her examination.

(h)~~(e)~~ A copy of the report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(7) FEES.--

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the ~~such~~ payments.

(c) If the petition is dismissed, costs and attorney's fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

Section 12. Subsection (4) of section 744.341, Florida Statutes, is renumbered as subsection (5) and amended, and a new subsection (4) is added to that section, to read:

744.341 Voluntary guardianship.--

(4) A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward not more than 90 days before the annual report is filed with the court. The certificate must certify that the ward is competent to understand the nature of the guardianship and of the ward's authority to delegate powers to the voluntary guardian.

(5) ~~(4)~~ A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated. The notice must be accompanied by a certificate from a licensed physician who has examined the ward not more than 30 days before the ward filed the notice with the court. The physician must certify that the ward is competent to understand the implications of terminating the guardianship. A copy of the notice and certificate must be served on all interested persons.

Section 13. Subsection (9) is added to section 744.361, Florida Statutes, to read:

744.361 Powers and duties of guardian.--

(9) A professional guardian must ensure that each of the guardian's wards is personally visited by the guardian or one of the guardian's professional staff at least once each calendar quarter. During the personal visit, the guardian or the guardian's professional staff person shall assess:

(a) The ward's physical appearance and condition.

(b) The appropriateness of the ward's current living situation.

(c) The need for any additional services and the necessity

for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.

This subsection does not apply to a professional guardian who has been appointed only as guardian of the property.

Section 14. Subsection (2) of section 744.365, Florida Statutes, is amended to read:

744.365 Verified inventory.--

(2) CONTENTS.--The verified inventory must include the following:

(a) All property of the ward, real and personal, that has come into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the property, ~~and~~ any cause of action accruing to the ward, and any trusts of which the ward is a beneficiary.~~;~~

(b) The location of the real and personal property in sufficient detail so that it may be clearly identified or located.~~; and~~

(c) A description of all sources of income, including, without limitation, social security benefits and pensions.

Section 15. Subsections (1) and (3) of section 744.367, Florida Statutes, are amended to read:

744.367 Duty to file annual guardianship report.--

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of

the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed on or before April 1 of each year ~~within 90 days after the end of the calendar year~~.

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person ~~of an incapacitated person~~ must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor ~~under the age of 14 years~~ or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 16. Section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.--Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(a) Information concerning the residence of the ward, including:

1. The ward's address at the time of filing the plan.~~;~~

2. The name and address of each place where the ward was maintained during the preceding year.~~;~~

3. The length of stay of the ward at each place.~~;~~

4. A statement of whether the current residential setting is best suited for the current needs of the ward.~~; and~~

5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

(b) Information concerning the medical and mental health conditions ~~condition~~ and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.~~;~~

2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. The ~~Such~~ report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.~~; and~~

3. The plan for providing ~~provision of~~ medical, mental health, and rehabilitative services in the coming year.

(c) Information concerning the social condition of the ward, including:

1. The social and personal services currently used ~~utilized~~ by the ward.~~;~~

2. The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships. ~~with others;~~

~~3. A description of the ward's activities at communication and visitation; and~~

3.~~4.~~ The social needs of the ward.

(2) Each plan filed by the legal guardian of a minor must

include:

(a) Information concerning the residence of the minor, including:

1. The minor's address at the time of filing the plan.

2. The name and address of each place the minor lived during the preceding year.

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the minor, including:

1. A resume of any professional medical treatment given to the minor during the preceding year.

2. A report from the physician who examined the minor no more than 180 days before the beginning of the applicable reporting period that contains an evaluation of the minor's physical and mental conditions.

3. The plan for providing medical services in the coming year.

(c) Information concerning the education of the minor, including:

1. A summary of the school progress report.

2. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships.

3. The social needs of the minor.

(3) ~~(2)~~ Each plan for an adult ward must address the issue of restoration of rights to the ward and include:

(a) A summary of activities during the preceding year that ~~which~~ were designed to enhance ~~increase~~ the capacity of the

ward.~~;~~

(b) A statement of whether the ward can have any rights restored.~~; and~~

(c) A statement of whether restoration of any rights will be sought.

(4)~~(3)~~ The court, in its discretion, may require reexamination of the ward by a physician at any time.

Section 17. Subsections (2) and (3) of section 744.3678, Florida Statutes, are amended to read:

744.3678 Annual accounting.--

(2) The annual accounting must include:

(a) A full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. This paragraph does not apply to any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.

(b) A copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

(3) The guardian must obtain a receipt, ~~or~~ canceled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward. The guardian must preserve all evidence of payment ~~the receipts and canceled checks~~, along with other substantiating papers, for a period of 3 years after his or her discharge. The receipts, proofs of payment ~~checks~~, and substantiating papers need not be filed with the court but shall

be made available for inspection and review at the ~~such~~ time and ~~in such~~ place and before the ~~such~~ persons as the court may ~~from time to time~~ order.

Section 18. Section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.--

(1) In a guardianship of property, when all assets of the estate are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits from a ~~pursuant to~~ settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward's property as shown in the year-end statement.

~~(2) The clerk has no responsibility to monitor or audit the accounts and may not accept a fee for doing so.~~

(2)~~(3)~~ The accounting allowed by subsection (1) is in lieu of the accounting and auditing procedures under s. 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party may seek judicial review as provided in s. 744.3685.

(3)~~(4)~~ The guardian need not be represented by an attorney in order to file the annual accounting allowed by subsection (1).

Section 19. Subsection (3) of section 744.368, Florida Statutes, is amended to read:

744.368 Responsibilities of the clerk of the circuit court.--

(3) Within 90 days after the filing of the verified inventory and accountings ~~initial or annual guardianship report~~ by a guardian of the property, the clerk shall audit the verified inventory and ~~or~~ the accountings ~~annual accounting~~. The clerk shall advise the court of the results of the audit.

Section 20. Subsection (19) of section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.--After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(19) Create or amend revocable or irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.

Section 21. Section 744.442, Florida Statutes, is created to read:

744.442 Delegation of authority.--

(1) A guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is

unavailable to act. A person designated as a surrogate guardian under this section must be a professional guardian.

(2)(a) A guardian must file a petition with the court requesting permission to designate a surrogate guardian.

(b) If the court approves the designation, the order must specify the name and business address of the surrogate guardian and the duration of appointment, which may not exceed 30 days. The court may extend the appointment for good cause shown. The surrogate guardian may exercise all powers of the guardian unless limited by order of the court. The surrogate guardian must file with the court an oath swearing or affirming that he or she will faithfully perform the duties delegated. The court may require the surrogate guardian to post a bond.

(3) This section does not limit the responsibility of the guardian to the ward and to the court. The guardian is liable for the acts of the surrogate guardian. The guardian may terminate the authority of the surrogate guardian by filing a written notice of the termination with the court.

(4) The surrogate guardian is subject to the jurisdiction of the court as if appointed to serve as guardian.

Section 22. Paragraphs (c), (e), and (f) of subsection (2) and subsection (4) of section 744.464, Florida Statutes, are amended to read:

744.464 Restoration to capacity.--

(2) SUGGESTION OF CAPACITY.--

(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, ~~the state attorney,~~ and any other

interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.

(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, ~~the state attorney,~~ the ward's next of kin, and any other interested persons as directed by the court.

~~(4) TIME LIMITATION FOR FILING SUGGESTION OF CAPACITY.--Notwithstanding this section, a suggestion of capacity may not be filed within 90 days after an adjudication of incapacity or denial of restoration, unless good cause is shown.~~

Section 23. Paragraph (a) of subsection (19) of section 744.474, Florida Statutes, is amended, and paragraph (b) of that subsection is redesignated as subsection (20) of that section and amended, to read:

744.474 Reasons for removal of guardian.--A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(19) Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice

is required, or who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that~~:~~

~~(a)~~ the current guardian is not a family member~~;~~ and subsection (20) applies.

(20)~~(b)~~ Upon a showing that removal of the current guardian is in the best interest of the ward, the court may remove the current guardian and appoint the petitioner, or such person as the court deems in the best interest of the ward, either as guardian of the person or of the property, or both.

Section 24. Section 744.511, Florida Statutes, is amended to read:

744.511 Accounting upon removal.--A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within 20 days after removal and shall serve a copy on the successor guardian and the ward, unless the ward is a minor ~~under 14 years of age~~ or has been determined to be totally incapacitated.

Section 25. Section 744.527, Florida Statutes, is amended to read:

744.527 Final reports and application for discharge; hearing.--

(1) When the court terminates the guardianship for any of the reasons set forth in s. 744.521, the guardian shall promptly file his or her final report. If the ward has died, the guardian must file a final report with the court no later than 45 days after he or she has been served with letters of administration

or letters of curatorship. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his or her duties, the court shall approve the final report. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual guardianship reports.

(2) The guardian applying for discharge may ~~is authorized to~~ retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his or her final returns and the order of discharge.

Section 26. Subsection (3) of section 744.528, Florida Statutes, is amended to read:

744.528 Discharge of guardian named as personal representative.--

(3) Any interested person may file a notice of ~~The court shall set~~ a hearing on any objections filed by the beneficiaries. Notice of the hearing must ~~shall~~ be served upon the guardian, beneficiaries of the ward's estate, and any other person to whom the court directs service. If a notice of hearing on the objections is not served within 90 days after filing of the objections, the objections are deemed abandoned.

Section 27. Subsection (6) of section 744.708, Florida Statutes, is amended to read:

744.708 Reports and standards.--

(6) A ~~The~~ public guardian shall ensure that each of the

guardian's wards is personally visited ~~ward is seen~~ by the public guardian or by one of the guardian's ~~a~~ professional staff ~~person~~ at least once each calendar quarter ~~four times a year~~. During this personal visit, the public guardian or the professional staff person shall assess:

(a) The ward's physical appearance and condition.

(b) The appropriateness of the ward's current living situation.

(c) The need for any additional services and the necessity for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.

Section 28. Paragraph (a) of subsection (5) of section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.--As used in this chapter:

(5) "Health care decision" means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

Section 29. Section 28.345, Florida Statutes, is amended to read:

28.345 Exemption from court-related fees and charges.--Notwithstanding any other ~~provision of this chapter or~~ law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, and public defenders, acting in their official capacity, and

state agencies~~,~~ are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

Section 30. Paragraph (c) of subsection (8) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.--Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(8) DESIGNATION OF BENEFICIARIES.--

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person as provided in s. 121.021(46), and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if the ~~such~~ person is no longer a minor or an incapacitated person as defined in s. 744.102~~(11) and (12)~~.

Section 31. Paragraph (c) of subsection (20) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Public Employee Optional Retirement Program.--

(20) DESIGNATION OF BENEFICIARIES.--

(c) Notwithstanding the participant's designation of benefits to be paid through a trust to a beneficiary that is a natural person, and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if the ~~such~~ person is no longer a minor or an incapacitated person as defined in s. 744.102~~(11) and (12)~~.

Section 32. Subsection (1) and paragraphs (b), (d), and (f) of subsection (4) of section 709.08, Florida Statutes, are amended to read:

709.08 Durable power of attorney.--

(1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.08, Florida Statutes"; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity, except as otherwise provided by this section. The durable power of attorney is exercisable as of the date of execution; however, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable upon the delivery of affidavits in paragraphs (4)(c) and (d) to the third party.

(4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS; AFFIDAVITS.--

(b) Any third party may rely upon the authority granted in a durable power of attorney that is conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)~~(11)~~(a) only after receiving the affidavits provided in paragraphs (c) and (d), and such reliance shall end when the third party has received notice as provided in subsection (5).

(d) A determination that a principal lacks the capacity to manage property as defined in s. 744.102(12)~~(11)~~(a) must be made and evidenced by the affidavit of a physician licensed to practice medicine pursuant to chapters 458 and 459 as of the date of the affidavit. A judicial determination that the principal lacks the capacity to manage property pursuant to chapter 744 is not required prior to the determination by the physician and the execution of the affidavit. For purposes of this section, the physician executing the affidavit must be the primary physician who has responsibility for the treatment and care of the principal. The affidavit executed by a physician must state where the physician is licensed to practice medicine, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(12)~~(11)~~(a). The affidavit may, but need not, be in the following form:

STATE OF_____

COUNTY OF_____

Before me, the undersigned authority, personally appeared (name of physician) , Affiant, who swore or affirmed that:

1. Affiant is a physician licensed to practice medicine in (name of state, territory, or foreign country) .

2. Affiant is the primary physician who has responsibility for the treatment and care of (principal's name) .

3. To the best of Affiant's knowledge after reasonable inquiry, Affiant believes that the principal lacks the capacity to manage property, including taking those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

_____

(Affiant)

Sworn to (or affirmed) and subscribed before me this (day of) (month) , (year) , by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

(Type of Identification Produced)

(f) A third party may not rely on the authority granted in

a durable power of attorney conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)~~(11)~~(a) when any affidavit presented has been executed more than 6 months prior to the first presentation of the durable power of attorney to the third party.

Section 33. Subsection (3) of section 744.1085, Florida Statutes, is amended to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements.--

(3) Each professional guardian defined in s. 744.102(17)~~(16)~~ and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

Section 34. For the purpose of incorporating the amendment made by this act to section 744.3215, Florida Statutes, in a reference thereto, subsection (4) of section 117.107, Florida Statutes, is reenacted to read:

117.107 Prohibited acts.--

(4) A notary public may not take the acknowledgment of or administer an oath to a person whom the notary public actually

knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), and where the person has not been restored to capacity as a matter of record.

Section 35. Subsection (13) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(13) In addition to any penalties imposed for noncriminal traffic infractions under ~~pursuant to~~ this chapter or imposed for criminal violations listed in s. 318.17, notwithstanding s. 318.121, a board of county commissioners or any unit of local government which is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968:

(a) May impose by ordinance a surcharge of up to $15 for any infraction or violation to fund state court facilities. The court may ~~shall~~ not waive this surcharge. Up to 25 percent of the revenue from such surcharge may be used to support local law libraries provided that the county or unit of local government provides a level of service equal to that provided prior to July 1, 2004, which shall include the continuation of library facilities located in or near the county courthouse or annexes.

(b) That imposed increased fees or service charges by ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the purpose of securing payment of the principal and interest on

bonds issued by the county before July 1, 2003, to finance state court facilities, may impose by ordinance a surcharge for any infraction or violation for the exclusive purpose of securing payment of the principal and interest on bonds issued by the county before July 1, 2003, to fund state court facilities until the date of stated maturity. The court may ~~shall~~ not waive this surcharge. The ~~Such~~ surcharge may not exceed an amount per violation calculated as the quotient of the maximum annual payment of the principal and interest on the bonds as of July 1, 2003, divided by the number of traffic citations for county fiscal year 2002-2003 certified as paid by the clerk of the court of the county. The ~~Such~~ quotient shall be rounded up to the next highest dollar amount. The bonds may be refunded only if savings will be realized on payments of debt service and the refunding bonds are scheduled to mature on the same date or before the bonds being refunded.

(c) May impose an additional $15 surcharge to fund the county's participation in the public guardianship program under chapter 744. Imposition of this surcharge must be by vote of two-thirds of the board of county commissioners or after a referendum approved by the electors of the county. Before imposing the surcharge, the county commission must demonstrate that available revenue sources are insufficient to fund such participation. The court may not waive this surcharge.

A county may not impose ~~both of~~ the surcharges authorized under both paragraphs (a) and (b) concurrently. The clerk of court shall report, no later than 30 days after the end of the

quarter, the amount of funds collected under this subsection during each quarter of the fiscal year. The clerk shall submit the report, in a format developed by the Office of State Courts Administrator, to the chief judge of the circuit, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 36. Section 938.065, Florida Statutes, is created to read:

938.065 Additional cost for public guardianship programs.--

(1) In addition to any fine prescribed by law for any misdemeanor offense, there is assessed as a court cost an additional surcharge of $18 on each fine, which shall be imposed by each county and circuit court and collected by the clerk of the court together with the fine.

(2) The clerk of the court shall collect and forward, on a monthly basis, all costs assessed under this section, less $3 per assessment as a service charge to be retained by the clerk, to the Department of Revenue for deposit into the General Revenue Fund. The funds collected shall be used exclusively to fund public guardianship programs in this state.

Section 37. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 459 Public Records
SPONSOR(S): Sands
TIED BILLS: HB 457 **IDEN./SIM. BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Civil Justice Committee			
3) Governmental Operations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office. Such anonymity must also be maintained in any publication concerning the direct-support organization.

This bill provides for future review and repeal of the exemption on October 2, 2010, and provides a statement of public necessity.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law [1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on the October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[3] See *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Statewide Public Guardianship Office

The Statewide Public Guardianship Office (SPGO) is housed within the Department of Elderly Affairs.[4] The purpose of the SPGO is to provide public guardians to incapacitated persons for whom there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.[5] The Legislature also authorized the creation of a direct-support organization to support the SPGO.[6] The purpose of the direct-support organization is:

> to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office . . . .[7]

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization.

This bill takes effect July 1, 2006. The public records exemption will automatically repeal on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 744.7082, F.S., to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office.

Section 2. Provides for review and future repeal of the exemption on October 2, 2010.

Section 3. Provides a statement of public necessity.

Section 4. Provides for an effective date of July 1, 2006, if HB 457 becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[4] Section 744.7021, F.S.
[5] Section 744.702, F.S.
[6] Section 744.7082, F.S.
[7] Section 744.7082(1)(b), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public records exemption will allow anonymous donations to the direct-support organization for the Statewide Public Guardianship Office. As such, those donors and potential donors who wish to donate anonymously will no longer be discouraged from donating by public records laws.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to public records; amending s. 744.7082, F.S.; creating an exemption from public records requirements for identifying information of persons making a donation of funds or property to the direct-support organization of the Statewide Public Guardianship Office; providing for review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (6) and (7) of section 744.7082, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section to read:

744.7082 Direct-support organization; definition; use of property; board of directors; audit; dissolution.--

(6) PUBLIC RECORDS.--The identity of a donor or prospective donor of funds or property to the direct-support organization who desires to remain anonymous, and all information identifying the donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and that anonymity must be maintained in any publication concerning the direct-support organization.

Section 2. Subsection (6) of s. 744.7082, Florida Statutes, is subject to the Open Government Sunset Review Act in

accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that the name and other identifying information of a donor or prospective donor to the direct-support organization of the Statewide Public Guardianship Office be held confidential and exempt from public disclosure because the disclosure of this information would adversely impact the efforts of the direct-support organization to collect funding or gifts of property to support the statewide office. The sole purpose of the direct-support organization is to raise funds for the statewide office, and donor contributions are a key element in the ability of the organization to achieve its goals. Some individuals who desire to donate to the direct-support organization wish to remain anonymous. The direct-support organization would be adversely affected if identifying information of a donor is released to the public. Therefore, the Legislature finds that any benefit derived from public disclosure of identifying information of a donor is outweighed by the necessity to keep the information confidential.

Section 4. This act shall take effect July 1, 2006, if House Bill 457, or similar legislation revising provisions relating to the Statewide Public Guardianship Office, is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 999 CS Suicide Prevention
SPONSOR(S): Adams
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Committee	8 Y, 0 N, w/CS	Hatfield	Mizereck
2) Future of Florida's Families Committee		Preston	Collins
3) Education Appropriations Committee			
4) Education Council			
5)			

SUMMARY ANALYSIS

House Bill 999 establishes a pilot program on suicide and depression prevention to be conducted by the Signs of Suicide Prevention Program (SOS) for secondary schools in Brevard, Orange, Osceola, and Seminole counties during the 2006-2007 fiscal year.

In order for a county included in the pilot to receive funding, a proposal must be submitted to the Department of Education (DOE) by September 1, 2006.

The bill requires that local school personnel in each participating county receive materials necessary for program implementation. The parent of each student must be provided with a copy of a screening form and program information to assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

The bill requires a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007.

The bill appropriates $600,000 from the General Revenue Fund to the DOE for the 2006-2007 fiscal year for distribution to the Michael Buonauro Foundation. The foundation must provide matching funds in the amount of $600,000 to receive this appropriation. See FISCAL ANALYSIS for further details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government-- The bill establishes a pilot program for secondary schools in selected counties on suicide and depression prevention.

Empower Families-- The bill requires parents of each student in a participating school to be provided with information that may assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the National Center for Health Statistics, the suicide rate for youths and young adults aged 15-24 years has tripled since 1950, and suicide is now the third leading cause of death in this age group. Recent studies indicate that the incidence of suicide attempts among adolescents may exceed 10% annually, although it is difficult to obtain reliable estimates because of the accompanying stigma with attempting suicide.[1]

A relatively new approach to reducing the incidence of suicide among adolescents is found in Signs of Suicide (SOS), a school-based prevention program.[2] According to Screening for Mental Health, Inc., (SMH), the SOS Program is a nationally recognized, easily implemented, cost-effective program of suicide prevention for secondary school students. It is the only school-based program to:

- Show a reduction in suicide attempts (by 40%) in a randomized controlled study (American Journal of Public Health, March, 2004).
- Be selected by the Substance Abuse and Mental Health Services Administration (SAMHSA) for its National Registry of Evidence-based Programs and Practices (NREPP).

The SOS Program has also documented a dramatic increase in help-seeking. (Adolescent and Family Health, 2003).[3]

Secondary schools participating in the SOS program may choose from program materials including a video and discussion guide and screening forms. The SOS program's primary objectives are to educate teens that depression is a treatable illness and to equip them to respond to a potential suicide involving a friend or family member using the SOS technique. SOS is an action-oriented approach instructing students how to **ACT** (**A**cknowledge, **C**are, and **T**ell) in the face of this mental health emergency.[4]

According to SAMHSA, the average amount of time to implement the program across 376 schools was approximately 2.5 days, although almost 40% of schools reported that they completed the program in one day. Results of a multi-site evaluation revealed:

- The average number of youth seeking counseling for depression/suicidality in the 30 days following the program (9.59) was significantly higher when compared with the average number

[1] Robert H. Aseltine Jr, Ph.D., and Robert DeMartino, M.D., *An Outcome Evaluation of the SOS Suicide Prevention Program*, American Journal of Public Health, March 2004, Vol. 94, No. 3, at 446.
[2] Id.
[3] www.mentalhealthscreening.org/highschool/
[4] Id.

of youth seeking help per month over the past year (3.93). This was an increase of almost 150%.

- There was a 70% increase in the average number of youth seeking counseling for depression/suicidality on behalf of a friend in the 30 days following the program (3.79) when compared with the average number of youth seeking help for a friend per month over the past year (2.25).
- The average number of youth seeking counseling for depression/suicidality remained high in the 3 months following the program (9.74) per month, and was significantly higher than the previous school year (3.93). There was also a 25% increase in the number of youths seeking help for a friend 3 months after implementation (2.78) when compared to the past year (2.25).[5]

The Michael Buonauro Foundation

Judy and Frank Buonauro, whose son Michael died by suicide May 28, 2004, created the Michael Buonauro Foundation. The Foundation secured the SOS program for all public high school students in Orange County, Florida, for the 2005-2006 school year. Private schools were also invited to participate in the program.[6]

Effects of Proposed Changes

The bill establishes a pilot program on suicide and depression prevention for secondary schools in Brevard, Orange, Osceola, and Seminole counties during the 2006-2007 fiscal year.

The bill provides legislative intent including support and funding for the pilot program and encourages collaboration with local mental health facilities and individual professionals.

In order for one of the counties authorized to participate in this pilot program to receive funding, the bill requires an SOS entity to submit a program proposal to the DOE by September 1, 2006.

The bill requires the pilot program to provide local school personnel in each participating county with the materials necessary for implementation. The parent of each student in a participating school must be provided with program information and a copy of a screening form to assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

The bill requires the SOS pilot program to provide a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007. The report must include the following:

- An itemized list of program costs;
- An evaluation of participating schools;
- An assessment of the quality of the program components;
- An assessment of the safety of program implementation;
- An assessment of the burden on school support staff after implementation;
- An assessment of the efficacy of the program; and
- Recommendations regarding program effects and outcomes.

The information must be reported for the pilot program in the aggregate, for each participating county, and for each participating school in each participating county.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

[5] http://modelprograms.samhsa.gov/
[6] http://www.southwestorlandobulletin.com

Section 1: Provides for a pilot program to be conducted by the Signs of Suicide Prevention Program for secondary schools in specified counties.

Section 2: Provides conditions for program funding.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill appropriates $600,000 from the General Revenue Fund to the DOE for the 2006-2007 fiscal year. Release of funds to the Michael Buonauro Foundation is contingent on the Foundation providing equivalent matching funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In order for one of the counties authorized to participate in this pilot program to receive funding, the bill requires an SOS entity to submit a program proposal to the DOE by September 1, 2006. The bill also

requires the SOS pilot program to provide a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007, containing the following:

- An itemized list of program costs;
- An evaluation of participating schools;
- An assessment of the quality of the program components;
- An assessment of the safety of program implementation;
- An assessment of the burden on school support staff after implementation;
- An assessment of the efficacy of the program; and
- Recommendations regarding program effects and outcomes.

The amount of time between September 1, 2006 and January 1, 2007 may not allow enough time for the information required in the report to be obtained.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the PreK-12 Committee adopted a strike-all amendment. This bill analysis reflects the bill as amended.

CHAMBER ACTION

The PreK-12 Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to suicide prevention; providing legislative intent; providing for a pilot program to be conducted by the Signs of Suicide Prevention Program for secondary schools in specified counties; requiring the submission of proposals to the Department of Education; providing for student participation in the pilot program and for the provision of certain information to parents; requiring a report to the Legislature; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Signs of Suicide Prevention Program for secondary schools; pilot program; legislative intent.--

(1) It is the intent of the Legislature to provide support and funding for a suicide and depression prevention pilot program conducted by the Signs of Suicide Prevention Program for secondary schools, hereinafter referred to as "SOS." The pilot

program shall encourage collaboration with local mental health facilities and individual professionals.

(2) During the 2006-2007 fiscal year, an SOS pilot program shall be conducted in Brevard, Orange, Osceola, and Seminole counties. In order to receive funding under this act, an SOS entity for a county authorized to participate in the pilot program must submit to the Department of Education by September 1, 2006, a proposal for suicide and depression prevention for secondary school students who attend school in that county. The pilot program shall provide school personnel in each participating school with the materials necessary for implementation.

(3) The parent of each student in a participating school shall be provided with a copy of program information and a screening form to assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

(4) By January 1, 2007, the district school board of each participating county shall provide to the President of the Senate and the Speaker of the House of Representatives a report that includes an itemized list of program costs, an evaluation of participating schools, an assessment of the quality of the program components, an assessment of the safety of program implementation, an assessment of the burden on school support staff after implementation of the program, an assessment of the efficacy of the program, and recommendations regarding program effects and outcomes. The information shall be reported for the

pilot program in the aggregate, for each participating county, and for each participating school in each participating county.

Section 2. The sum of $600,000 is appropriated from the General Revenue Fund to the Department of Education for the 2006-2007 fiscal year to be distributed to the Michael Buonauro Foundation to implement the Signs of Suicide Prevention Program as a pilot program for secondary schools in Brevard, Orange, Osceola, and Seminole counties in accordance with this act. The Michael Buonauro Foundation shall provide matching funds in the amount of $600,000 in order to receive the appropriation from the General Revenue Fund.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1047 CS Parental Relocation with a Child
SPONSOR(S): Stargel
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Shaddock	Bond
2) Future of Florida's Families Committee		Preston	Collins
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a procedure that a primary residential parent must follow when seeking to relocate with a minor child. Under current law, only a limited number of primary residential parents must give notice of a planned relocation with the minor child. This bill requires any primary residential parent seeking to relocate more than 50 miles with a minor child to first notify all persons entitled to visitation of the planned move. Absent an objection, the move is allowed. If an objection is filed, this bill gives the court guidelines for determining whether to allow the relocation.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – This bill increases the burdens of government on family decision-making.

B. EFFECT OF PROPOSED CHANGES:

Current Law

In single-parent families with children, a primary residential parent's attempt to relocate is addressed in two ways; with only one provided for in statute. When a residency restriction clause is provided in the final judgment of divorce, a framework exists in the statutes for what a court is to consider when reviewing a primary residential parent's petition for relocation.[1] That framework provides a court is to consider the following factors to determine whether the primary residential parent should be permitted to relocate with the child:

- Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
- The extent to which visitation rights have been allowed and exercised.
- Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.
- Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.
- Whether the cost of transportation is financially affordable by one or both parties.
- Whether the move is in the best interests of the child.[2]

Section 61.13(2)(d), F.S., is explicit that "[n]o presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent." In essence, the existing statute "imposes a fact-specific framework that allows the trial court to base a relocation decision 'on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate.'"[3]

The existing statute is effective when a petition for relocation by a primary residential parent has been filed. However, in the absence of a residency restriction clause in the final judgment, many times the primary residential parent simply moves without authorization. The following excerpt from the Fourth District Court of Appeal, in *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002), describes this scenario which it described as a "catch 22."

> The "catch 22" scenario unfolds as follows. Absent a residency restriction clause, the custodial parent is free to move the children without the consent of, or

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[1] Section 61.13(2)(d), F.S.

[2] Section 61.13(2)(d), F.S., was enacted to overrule a line of cases as this excerpt from *Berrebbi v. Clarke*, 870 So. 2d 172, 173-74 (Fla. 2d DCA 2004) explains:

> Section 61.13(2)(d) overrules a presumption previously adopted by the *Mize v. Mize*, 621 So.2d 417 (Fla.1993), and *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla.1996), line of cases that a request for relocation should be favored when the request is made in good faith. *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2d DCA 1999); *Flint* [*v. Fortson*], 744 So.2d 1217 [(Fla. 4th DCA 1999)]. Instead, the statute imposes a fact-specific framework that allows the trial court to base a relocation decision "on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate."

[3] *Berrebbi*, 870 So. 2d at 174 (citing *Flint v. Fortson*, 744 So.2d 1217, 1218)(Fla. 4th DCA 1999).

even notice to, the non-custodial parent. A trial court is prohibited from including a residency restriction clause in a final judgment unless the custodial parent seeks to relocate. An intent to relocate is often first revealed when the move takes place. At that point, the non-custodial parent's only option is to seek a modification of custody. However, to secure a modification of custody, he or she must show a substantial change of circumstances, and that the modification will be in the best interest of the children. [Section] 61.13(1)(a) Fla. Stat (2001). Until recently, relocation of the children without notice or consent was not a substantial change of circumstances that would support modification of the custody provisions of a final judgment. The non-custodial parent is up the custody creek without the proverbial paddle.

This "catch 22" scenario has been reduced by the recent amendment of section 61.13. It now provides that refusal to honor a non-custodial parent's visitation rights without just cause will support a modification of custody. But, the non-custodial parent must still show that the modification is in the best interest of the children. [Section] 61.13(4)(c)5 Fla. Stat. (2001). Boiled down to its essentials, under existing law, a custodial parent can conceal his or her intent to relocate the children, then after entry of the final judgment relocate to a place for [*sic*] enough away to effectively deny visitation to the non-custodial parent, and leave the non-custodial parent with the uphill battle.

At that point, much has changed, and an element of greatly increased hostility has been injected into the case. The judge's role is transformed from a thoughtful consideration of statutory criteria before the move to a fragile balancing act. The court must consider the significant economic factors inherent in a relocation, such as the purchase/sale of a residence, rent and utility deposits, school enrollment, and many other expenditures made by the custodial parent who relocates. The court must also consider the additional disruption of the children's lives that will occur if the court orders the custodial parent to return, or, by modifying custody, orders the children to be relocated a second time, this time without the presence and support of the parent with whom the children have lived. The longer the relocated parent can delay resolution of the issue, the greater the impact on the children of an additional relocation. In many cases, consideration of these factors, particularly those relating to disruption of the children's lives, actually bolsters the position of the relocated parent. The circumstances to be reviewed have already altered the pre-existing status quo.

For a non-custodial parent to be guaranteed of notification before a relocation takes place, a residency restriction clause must be in existence by agreement or order. All that an inclusion of such a provision will do to is allow the parties to either agree to the move or request leave of court to relocate. This will allow the trial court to review the factors outlined in section 61.13(2)(d), Florida Statutes (2001), in an objective and thoughtful manner instead of having to address these sensitive issues after the fact. It will prevent the infamous flights in the night that send families into the land of panic, chaos, and hostility, and which cause such disruption in the lives of children.[4]

Effect of Bill

[4] *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002)(internal citations omitted).

The bill provides a mechanism for a court to determine the appropriateness of any relocation by a primary residential parent before the relocation. The bill defines the following terms:

- "Change of residence address" means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.

- "Child" means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.

- "Court" means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the UCCJEA, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.

- "Other person" means an individual who is not the parent and who, by court order, maintains the primary residence of a child or has visitation rights with a child.

- "Parent" means any person so named by court order or express written agreement that is subject to court enforcement or a person reflected as a parent on a birth certificate and in whose home a child maintains a primary or secondary residence.

- "Person entitled to be the primary residential parent of a child" means a person so designated by court order or by an express written agreement that is subject to court enforcement or a person seeking such a designation, or, when neither parent has been designated as primary residential parent, the person seeking to relocate with a child.

- "Principal or primary residence of a child" means the home of the designated primary residential parent. When rotating custody is in effect, each parent shall be considered to be the primary residential parent.

- "Relocation" means a change in the principal residence of a child for a period of 60 consecutive days or more but does not include a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

A primary residential parent must notify the other parent and every other person entitled to visitation with the child of the proposed relocation. The primary residential parent must file a "Notice of Intent to Relocate" ("Notice") outlining the parent's intention to relocate with the child.

The Notice shall list the details of the proposed move and it must provide:

- If known, a description of the location of the new residence, including the state, city, and specific physical address.

- If known, the mailing address, if not the same as the physical address.

- If known, the home telephone number of the intended new residence.

- The date of the intended move.

- A detailed statement of the specific reasons for the proposed relocation of the child. If one of the reasons for the move is based on a written job offer, that written job offer must be attached.

- A proposal for a revised post-relocation schedule of visitation with the child.

- A statement that absent an objection the relocation will be permitted without a hearing. In order to properly file an objection, it must be in writing filed with the court, and served on the other parent within 30 days after service of the Notice.

- The mailing address of the parent or other person seeking to relocate to which an objection should be sent.

The Notice must be signed under oath under penalty of perjury. The contents of the Notice are not privileged; however, the Notice shall initially not be filed with the court, but instead, the Notice shall be served upon the nonrelocating parent and other persons entitled to visitation with the child. A primary residential parent required to give Notice, has a continuing duty to provide current and updated information in the Notice.

A parent seeking relocation must also prepare a "Certificate of Filing Notice of Intent to Relocate" ("Certificate"). This Certificate must certify the date the Notice was served on the other parent or other person entitled to receive the Notice.

The Notice and Certificate must be served on the other parent and on every person entitled to visitation. In cases where there is a pending action regarding the child, service may be according to court rule. Otherwise, the service must comply with the requirements of chapters 48 and 49, F.S.

As the Notice warns, if after 30 days after service no written objection is filed, the relocation is deemed authorized and may occur. If an objection is filed, the objection must include the specific factual basis for seeking a prohibition of the relocation, including a statement of the amount of participation or involvement the objecting party currently has or has had in the life of the child.

If a parent relocates a child without complying with the Notice procedure, that action subjects a parent to contempt and other proceedings to compel the return of the child. Further, the parent's failure to follow this procedure may be taken into account by a court in any action seeking a determination or modification of residence, custody, or visitation with the child as:

- A factor in making a determination regarding the relocation of a child.

- A factor in determining whether residence or contact, access, visitation, and time-sharing arrangements should be modified.

- A basis for ordering the temporary or permanent return of the child.

- Sufficient cause to order the parent seeking to relocate the child to pay reasonable expenses and attorney's fees incurred by the objecting party.

- For the award of reasonable attorney's fees and costs, including interim travel expenses incident to visitation or securing the return of the child.

The court may also order the return of the child, if a relocation has previously taken place, or other appropriate relief. But to require such action, the court must find: the Notice was not timely provided; the child was already relocated without Notice, written agreement or court approval; and based upon the evidence presented at a preliminary hearing, there is a likelihood that after a final hearing the court will not approve the relocation.

On the other hand, the court may grant a temporary order permitting the relocation. But the court must find the Notice was timely provided, and the evidence presented at a preliminary hearing demonstrates that there is a likelihood that after a final hearing the court will approve the relocation.

If temporary relocation of a child is permitted, the court may require the relocating parent to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating parent. However, if temporary relocation is authorized, the court may not give any weight to that determination in reaching its final decision.

No presumption will arise in favor of or against a request to relocate with the child when a primary residential parent seeks to move and the move will materially affect the current schedule of contact, access, and time-sharing with the nonrelocating parent. The court must evaluate all of the following factors in reaching a decision regarding a relocation:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.

- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.

- The child's preference, taking into consideration the age and maturity of the child.

- Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.

- The reasons of each parent or other person for seeking or opposing the relocation.

- The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.

- That the relocation is sought in good faith, the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.

- The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.

- A history of substance abuse or domestic violence as defined in s. 741.28, F.S., or which meets the criteria of s. 39.806(1)(d), F.S., by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

- Any other factor affecting the best interest of the child or as set forth in s. 61.13, F.S.[5]

[5] Currently, s. 61.13(2)(d), F.S., provides the following factors are to be considered by a court in making a determination as to whether the primary residential parent may relocate with a child: whether the move would be likely to improve the general quality of life for both the residential parent and the child; the extent to which visitation rights have been allowed and exercised; whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements; whether the substitute visitation will be adequate to foster a continuing meaningful

If an objection is filed, the person seeking to relocate has the burden of proof and that person must initiate a court proceeding seeking court permission to relocate. The initial burden is on the person wishing to relocate to prove by a preponderance of the evidence that relocation is in the best interest of the child. If that burden is satisfied, the burden shifts to the nonrelocating parent or other person to show by a preponderance of the evidence the opposite.

If relocation is permitted, the court may, in its discretion, order contact with the nonrelocating parent, including access, visitation, time-sharing, telephone, Internet, web-cam, and other arrangements sufficient to ensure that the child has continuing and meaningful contact with the nonrelocating persons. This is only if that contact is financially affordable and in the best interest of the child.

Moreover, if applicable, the court must specify how the transportation costs will be allocated between the parents and other persons entitled to contact with the child(ren). And the court may adjust the child support award, as appropriate, considering the costs of transportation and the respective net incomes of the parents in accordance with state child support guidelines.

An evidentiary hearing on a pleading seeking temporary or permanent relocation must be accorded priority on the court's calendar. Throughout the process established in this bill, if a person seeking relocation of a child is entitled to have certain information prevented from disclosure due to an existing public records exception, the court may enter an order modifying the disclosure requirements of the bill.

The provisions of this section apply: before July 1, 2006, if the existing order defining custody, primary residence, and visitation or a written agreement does not expressly govern the relocation of the child; to an order, whether temporary or permanent, regarding primary residence of a child or visitation with a child issued after July 1, 2006; and to any relocation or proposed relocation, whether permanent or temporary, of a child during any pending proceeding wherein residence of or visitation with a child is an issue.

To the extent that a provision of this section conflicts with an existing order or enforceable written agreement signed by both parents, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the principal residence address of a parent.

Finally, the bill removes the existing framework found in s. 61.13(2)(d), F.S., for dealing with a primary residential parent's relocation.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.13(2)(d), F.S., by deleting standards for determining whether to allow a primary residential parent to move a child.

Section 2. Creates s. 61.13001, F.S., relating to parental relocation of children.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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relationship between the child and the secondary residential parent; whether the cost of transportation is financially affordable by one or both parties; and whether the move is in the best interests of the child.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice committee adopted one amendment to the bill. The amendment made the following changes:

- Removed a requirement that the Notice of Intent to Relocate be filed 45 days before the intended move.
- Deleted s. 61.13(2)(d), F.S., regarding relocation of primary residential parent, which conflicts with the newly created statute.
- Provided for the exclusion of all information that may be privileged under the public records laws.

The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to parental relocation with a child; amending s. 61.13, F.S.; deleting standards for determining whether to allow a primary residential parent to move a child; creating s. 61.13001, F.S.; providing definitions; providing for notification of certain persons of the intent to relocate the child and providing procedures therefor; requiring certain information to be provided on a Notice of Intent to Relocate; providing procedures for objecting to the relocation of a child; providing applicability of public records law; providing for content of an objection to relocation; authorizing the court to grant a temporary order restraining the relocation of a child under certain circumstances; prohibiting certain presumptions and requiring certain factors to be evaluated by the court with regard to relocation of a child; assigning the burden of proof in cases of relocation of a child; authorizing the court to order certain contact with the child by the nonrelocating

party; granting priority for certain hearings and trials under s. 61.13001, F.S.; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.--

(2)

~~(d) No presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent. In making a determination as to whether the primary residential parent may relocate with a child, the court must consider the following factors:~~

~~1. Whether the move would be likely to improve the general quality of life for both the residential parent and the child.~~

~~2. The extent to which visitation rights have been allowed and exercised.~~

~~3. Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.~~

~~4. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.~~

~~5. Whether the cost of transportation is financially affordable by one or both parties.~~

~~6. Whether the move is in the best interests of the child.~~

Section 2. Section 61.13001, Florida Statutes, is created to read:

61.13001 Parental relocation with a child.--

(1) DEFINITIONS.--As used in this section:

(a) "Change of residence address" means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.

(b) "Child" means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.

(c) "Court" means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.

(d) "Other person" means an individual who is not the parent and who, by court order, maintains the primary residence of a child or has visitation rights with a child.

(e) "Parent" means any person so named by court order or express written agreement that is subject to court enforcement

or a person reflected as a parent on a birth certificate and in whose home a child maintains a primary or secondary residence.

(f) "Person entitled to be the primary residential parent of a child" means a person so designated by court order or by an express written agreement that is subject to court enforcement or a person seeking such a designation, or, when neither parent has been designated as primary residential parent, the person seeking to relocate with a child.

(g) "Principal or primary residence of a child" means the home of the designated primary residential parent. For purposes of this section only, when rotating custody is in effect, each parent shall be considered to be the primary residential parent.

(h) "Relocation" means a change in the principal residence of a child for a period of 60 consecutive days or more but does not include a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

(2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent who is entitled to primary residence of the child shall notify the other parent, and every other person entitled to visitation with the child, of a proposed relocation of the child's principal residence. The form of notice shall be according to this section:

(a) The parent seeking to relocate shall prepare a Notice of Intent to Relocate. The following information must be included with the Notice of Intent to Relocate and signed under oath under penalty of perjury:

1. A description of the location of the intended new residence, including the state, city, and specific physical address, if known.

2. The mailing address of the intended new residence, if not the same as the physical address, if known.

3. The home telephone number of the intended new residence, if known.

4. The date of the intended move or proposed relocation.

5. A detailed statement of the specific reasons for the proposed relocation of the child. If one of the reasons is based upon a job offer which has been reduced to writing, that written job offer must be attached to the Notice of Intent to Relocate.

6. A proposal for a revised postrelocation schedule of visitation with the child.

7. Substantially the following statement, in all capital letters and in the same size type, or larger, as the type in the remainder of the notice:

AN OBJECTION TO THE PROPOSED RELOCATION MUST BE MADE IN WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR OTHER PERSON SEEKING TO RELOCATE WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE OF INTENT TO RELOCATE. IF YOU FAIL TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE ALLOWED WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.

8. The mailing address of the parent or other person seeking to relocate to which the objection filed under

subsection (4) to the Notice of Intent to Relocate should be sent.

The contents of the Notice of Intent to Relocate are not privileged. For purposes of encouraging amicable resolution of the relocation issue, a copy of the Notice of Intent to Relocate shall initially not be filed with the court but instead served upon the nonrelocating parent, other person, and every other person entitled to visitation with the child, and the original thereof shall be maintained by the parent or other person seeking to relocate.

(b) The parent seeking to relocate shall also prepare a Certificate of Filing Notice of Intent to Relocate. The certificate shall certify the date that the Notice of Intent to Relocate was served on the other parent and on every other person entitled to visitation with the child.

(c) The Notice of Intent to Relocate, and the Certificate of Filing Notice of Intent to Relocate, shall be served on the other parent and on every other person entitled to visitation with the child. If there is a pending court action regarding the child, service of process may be according to court rule. Otherwise, service of process shall be according to chapters 48 and 49.

(d) A person giving notice of a proposed relocation or change of residence address under this section has a continuing duty to provide current and updated information required by this section when that information becomes known.

(e) If the other parent and any other person entitled to visitation with the child fails to timely file an objection, the relocation shall be allowed and the court shall enter an order. If an objection is timely filed, the burden shifts to the parent or person seeking to relocate to initiate court proceedings to obtain court permission to relocate prior to doing so.

(f) The act of relocating the child after failure to comply with the notice of intent to relocate procedure described in this subsection subjects the party in violation thereof to contempt and other proceedings to compel the return of the child and may be taken into account by the court in any initial or postjudgment action seeking a determination or modification of residence, custody, or visitation with the child as:

1. A factor in making a determination regarding the relocation of a child.

2. A factor in determining whether residence or contact, access, visitation, and time-sharing arrangements should be modified.

3. A basis for ordering the temporary or permanent return of the child.

4. Sufficient cause to order the parent or other person seeking to relocate the child to pay reasonable expenses and attorney's fees incurred by the party objecting to the relocation.

5. For the award of reasonable attorney's fees and costs, including interim travel expenses incident to visitation or securing the return of the child.

(3) APPLICABILITY OF PUBLIC RECORDS LAW.--If the parent or other person seeking to relocate a child, or the child, is entitled to prevent disclosure of location information under any public records exemption applicable to that person, the court may enter any order necessary to modify the disclosure requirements of this section in compliance with the public records exemption.

(4) CONTENT OF OBJECTION TO RELOCATION.--An objection seeking to prevent the relocation of a child shall be verified and served within 30 days after service of the Notice of Intent to Relocate. The objection shall include the specific factual basis supporting the reasons for seeking a prohibition of the relocation, including a statement of the amount of participation or involvement the objecting party currently has or has had in the life of the child.

(5) TEMPORARY ORDER.--

(a) The court may grant a temporary order restraining the relocation of a child or ordering the return of the child, if a relocation has previously taken place, or other appropriate remedial relief, if the court finds:

1. The required notice of a proposed relocation of a child was not provided in a timely manner.

2. The child already has been relocated without notice or written agreement of the parties or without court approval.

3. From an examination of the evidence presented at the preliminary hearing that there is a likelihood that upon final hearing the court will not approve the relocation of the primary residence of the child.

(b) The court may grant a temporary order permitting the relocation of the child pending final hearing, if the court:

1. Finds that the required Notice of Intent to Relocate was provided in a timely manner.

2. Finds from an examination of the evidence presented at the preliminary hearing that there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child, which findings must be supported by the same factual basis as would be necessary to support the permitting of relocation in a final judgment.

(c) If the court has issued a temporary order authorizing a party seeking to relocate or move a child before a final judgment is rendered, the court may not give any weight to the temporary relocation as a factor in reaching its final decision.

(d) If temporary relocation of a child is permitted, the court may require the person relocating the child to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating party.

(6) NO PRESUMPTION; FACTORS TO DETERMINE CONTESTED RELOCATION.--No presumption shall arise in favor of or against a request to relocate with the child when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact, access, and time-sharing with the nonrelocating parent or other person. In reaching its decision regarding a proposed temporary or permanent relocation, the court shall evaluate all of the following factors:

(a) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.

(b) The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(c) The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.

(d) The child's preference, taking into consideration the age and maturity of the child.

(e) Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.

(f) The reasons of each parent or other person for seeking or opposing the relocation.

(g) The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.

(h) That the relocation is sought in good faith, the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.

(i) The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.

(j) A history of substance abuse or domestic violence as defined in s. 741.28 or which meets the criteria of s. 39.806(1)(d) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

(k) Any other factor affecting the best interest of the child or as set forth in s. 61.13.

(7) BURDEN OF PROOF.--The parent or other person wishing to relocate has the burden of proof if an objection is filed and must then initiate a proceeding seeking court permission for relocation. The initial burden is on the parent or person wishing to relocate to prove by a preponderance of the evidence that relocation is in the best interest of the child. If that burden of proof is met, the burden shifts to the nonrelocating parent or other person to show by a preponderance of the

evidence that the proposed relocation is not in the best interest of the child.

(8) ORDER REGARDING RELOCATION.--If relocation is permitted:

(a) The court may, in its discretion, order contact with the nonrelocating parent, including access, visitation, time sharing, telephone, Internet, web-cam, and other arrangements sufficient to ensure that the child has frequent, continuing, and meaningful contact, access, visitation, and time sharing with the nonrelocating parent or other persons, if contact is financially affordable and in the best interest of the child.

(b) If applicable, the court shall specify how the transportation costs will be allocated between the parents and other persons entitled to contact, access, visitation, and time sharing and may adjust the child support award, as appropriate, considering the costs of transportation and the respective net incomes of the parents in accordance with state child support guidelines.

(9) PRIORITY FOR HEARING OR TRIAL.--An evidentiary hearing or nonjury trial on a pleading seeking temporary or permanent relief filed pursuant to this section shall be accorded priority on the court's calendar.

(10) APPLICABILITY.--

(a) The provisions of this section apply:

1. Before July 1, 2006, if the existing order defining custody, primary residence, and visitation or a written agreement does not expressly govern the relocation of the child.

2. To an order, whether temporary or permanent, regarding primary residence of a child or visitation with a child issued after July 1, 2006.

3. To any relocation or proposed relocation, whether permanent or temporary, of a child during any pending proceeding wherein residence of or visitation with a child is an issue.

(b) To the extent that a provision of this section conflicts with an existing order or enforceable written agreement signed by both parents, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the principal residence address of a parent.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1099 CS — Court Actions Involving Families
SPONSOR(S): Planas
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
2) Future of Florida's Families Committee		Preston	Collins
3) Judiciary Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system. These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

The bill takes effect on July 1, 2006.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

B. EFFECT OF PROPOSED CHANGES:

Background

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system.[1] These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

Florida's initiative for a unified family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increases, the Supreme Court has noted that it must seek to improve productivity and conserve resources.[2] Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.[3]

In 2002, a joint interim project was conducted by the Senate Committee on Judiciary and the Senate Committee on Children and Families. Several recommendations for statutory change were included in the report. One such change was to allow the use of a unique personal identification for people who come before the court.[4]

Under current law, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court.

Effect of Proposed Changes

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[1] Chapter 2005-239, L.O.F.

[2] See *In Re Report of the Family Court Steering Committee, 794 So.2d 518 (Fla. 2001)*. The court, at p.520, reports that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings – over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened - almost 70%.

[3] See *In Re Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994)*.

[4] See Senate Interim Project Report 2002-141, Review of Family Courts Division and the Model Family Court: Court Services and System, and Senate Interim Project Report 2002-121, Review of Family Courts Division and the Model Family Court: Other Services and Systems for Children and Families.

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. These additional purposes are added to chapter 39, F.S., pertaining to proceedings relating to children, chapter 61, F.S., pertaining to dissolution of marriage, support, and custody, chapter 63, F.S., pertaining to adoption, section 68.07, F.S., pertaining to name change, chapter 88, F.S., pertaining to the Uniform Interstate Family Support Act, chapter 741, F.S., pertaining to marriage and domestic violence, chapter 742, F.S., pertaining to determination of parentage, chapter 743, F.S., pertaining to disability of nonage of minors removed, chapter 984, F.S., pertaining to children and families in need of services, chapter 985, F.S., pertaining to the juvenile justice system, and part II of chapter 1003, F.S., pertaining to school attendance. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.

- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.

- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.

- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to proceedings relating to children.

Section 2. Amends s. 61.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to dissolution of marriage, support, and custody.

Section 3. Amends s. 63.022, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to adoption.

Section 4. Amends s. 68.07, F.S., relating to the purposes and legislative intent of the section in Florida Statutes pertaining to name change.

Section 5. Creates s. 88.1041, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the Uniform Interstate Family Support Act.

Section 6. Amends s. 741.2902, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to marriage and domestic violence.

Section 7. Creates s. 742.016, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to determination of parentage.

Section 8. Creates s. 743.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to disability of nonage of minors removed.

Section 9. Amends s. 984.01, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to children and families in need of services.

Section 10. Amends s. 985.02, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the juvenile justice system.

Section 11. Creates s. 1003.20, F.S., relating to the purposes and legislative intent of the part in Florida Statutes pertaining to school attendance.

Section 12. Provides that the bill becomes effective on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "D. Fiscal Comments" below.

D. FISCAL COMMENTS:

The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Though the provisions of the bill are non-substantive, placing identical language in multiple places in Florida Statutes may make it difficult in the future to maintain consistency should these provisions ever need to be rewritten.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 15, 2006, meeting, the Judiciary Committee approved a strike-all amendment which differs from the bill as filed by rewording the Legislative Intent language and placing it in eleven separate statutes relating to court proceedings involving children and families. The bill as filed placed the language in only three separate statutes. The eleven statutes are located in the following areas:

- Chapter 39 – Proceedings Relating to Children
- Chapter 61 – Dissolution of Marriage
- Chapter 63 – Adoption
- Section 68.07 – Name Change
- Chapter 88 – Uniform Interstate Family Support Act
- Chapter 741 – Marriage; Domestic Violence
- Chapter 742 – Determination of Parentage
- Chapter 743 – Disability of Nonage of Minors Removed
- Chapter 984 – Children and Families in Need of Services
- Chapter 985 – Delinquency; Interstate Compact on Juveniles
- Chapter 1003 – Part II – School Attendance

CHAMBER ACTION

The Judiciary Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to court actions involving families; amending ss. 39.001, 61.001, 63.022, 68.07, 741.2902, 984.01, and 985.02, F.S., and creating ss. 88.1041, 742.016, 743.001, and 1003.20, F.S.; providing additional purposes relating to implementing a unified family court program in the circuit courts; providing legislative intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) is added to subsection (1) of section 39.001, Florida Statutes, to read:

39.001 Purposes and intent; personnel standards and screening.--

(1) PURPOSES OF CHAPTER.--The purposes of this chapter are:

(n) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that

involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 2. Paragraph (d) is added to subsection (2) of section 61.001, Florida Statutes, to read:

61.001 Purpose of chapter.--

(2) Its purposes are:

(d) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of

this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 3. Subsection (6) is added to section 63.022, Florida Statutes, to read:

63.022 Legislative intent.--

(6) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to

support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 4. Subsection (9) is added to section 68.07, Florida Statutes, to read:

68.07 Change of name.--

(9) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully

integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 5. Section 88.1041, Florida Statutes, is created to read:

88.1041 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute

resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 6. Subsection (3) is added to section 741.2902, Florida Statutes, to read:

741.2902 Domestic violence; legislative intent with respect to judiciary's role.--

(3) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation,

refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 7. Section 742.016, Florida Statutes, is created to read:

742.016 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 8. Section 743.001, Florida Statutes, is created to read:

743.001 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 9. Paragraph (g) is added to subsection (1) of section 984.01, Florida Statutes, to read:

984.01 Purposes and intent; personnel standards and screening.--

(1) The purposes of this chapter are:

(g) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 10. Paragraph (j) is added to subsection (1) of section 985.02, Florida Statutes, to read:

985.02 Legislative intent for the juvenile justice system.--

(1) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) A fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 11. Section 1003.20, Florida Statutes, is created to read:

1003.20 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that

involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 12. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239 Child Abuse
SPONSOR(S): Detert
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Future of Florida's Families Committee		Preston	Collins
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute, relating to dependency, that defines child abuse, and specifically defines, what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines "child abuse" (simple child abuse) and "aggravated child abuse," but does not specifically address corporal punishment.

Courts have looked to the above statutes in an attempt to determine when corporal discipline rises to the level of criminal child abuse. The courts' analyses and opinions have resulted in an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* simple child abuse.

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury.

Provisions of the bill will result in courts no longer having to look to Ch. 39, F.S., to try and determine the legislature's intent with regards to when excessive corporal punishment rises to the level of criminal child abuse.

There is no fiscal impact anticipated on either local or state governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term "inappropriate or excessively harsh corporal discipline."

Promote personal responsibility – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term "inappropriate or excessively harsh corporal discipline."

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse.[1] However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.[2] Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines child abuse, but does not specifically address corporal punishment.

Chapter 39, F.S. – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.[3] Section 39.01, F.S., provides that "corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;
- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Permanent or temporary disfigurement;
- Permanent or temporary loss or impairment of a body part or function; or
- Significant bruises or welts."
-

Under Chapter 39, F.S., protective investigations and dependency proceedings could result if there is a report that a child has been abused. A person who is found to have abused a child under Ch. 39, F.S., could also be charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

Section 827.03(1), F.S. – Criminal Child Abuse

[1] *See, e.g., State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001); *Corsen v. State*, 784 (So.2d 535 (Fla. 5th DCA 2001); *Moakley v. State*, 547 So.2d 1246 (Fla. 5th DCA 1989).
[2] *Raford v. State*, 828 So.2d 1012 (Fla. 2002).
[3] *Id.*

Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

(a) Intentional infliction of physical or mental injury upon a child;
(b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child *without* causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.[4] This type of child abuse is often referred to as "simple" child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, and provides, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so actually *causes* great bodily harm, permanent disability, or permanent disfigurement to a child.

Case law - Relationship Between Chapter 39 and Section 827.03, F.S.

It would appear from the plain language of the statutes that a person who commits excessive corporal discipline, as defined by Ch. 39, F.S., could also be charged with a crime under s. 827.03, F.S. (either simple or aggravated depending on how serious the injury was). The courts, however, have used a different analysis.

In 2002, the Florida Supreme Court held that there is no parental privilege barring prosecution for simple child abuse under s. 827.03(1), F.S.[5] In its decision, the court discussed corporal punishment and when such punishment rises to the level of simple child abuse. After reviewing the legislative histories of Ch. 39 and s. 827.03, F.S., the court stated that a parent can be charged with *simple* child abuse for excessive corporal punishment that falls between the level of abuse required to establish *civil* child abuse and that required to prove *aggravated* child abuse.[6] The court stated that if a parent commits *civil* child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not rise to the level of aggravated child abuse to be treated as simple child abuse.[7]

In *King v. State*, 908 So.2d 954 (Fla. 2nd DCA 2005), the court cited the *Raford* case and held that a school administrator's spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that their holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

> "Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes."

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.[8]

Effect of the Case law

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[4] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082, 775.083, or s. 775.084, F.S.
[5] *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)
[6] *Id. See also*, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001) (If a parent can be charged with civil child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not result in permanent disability or permanent disfigurement to be treated as simple child abuse.).
[7] *Id* at 1019.
[8] *State v. King*, 908 So.2d 1058 (Fla. 2005).

In essence, the courts appear to have created an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* simple child abuse. This is especially puzzling considering that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S., encompasses a wide range of injuries (e.g., injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *simple* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple child abuse.

Effect of the Bill

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as "an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury."[9]

As a result, courts will no longer have to look to Ch. 39, F.S., to try and determine the legislature's intent in regards to when excessive corporal punishment rises to the level of criminal child abuse.

The bill also reenacts ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., to incorporate the amendments to s. 827.03, F.S., in references thereto.

C. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., revising the definition of the term "child abuse" to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a penalty; and defining "inappropriate or excessively harsh corporal discipline."

Section 2. Reenacts s. 775.082(9)(a), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 3. Reenacts s. 787.04(5), F.S., relating to removing minors from the state or concealing minors contrary to state agency order or court order, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 4. Reenacts s. 901.15(8), F.S., relating to when an arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto.

[9] This definition largely mirrors the language in Ch. 39, F.S.

Section 5. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference predicted an insignificant impact as a result of the provisions of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

   In *Marshall v. Reams,* 32 Fla. 499, 14 So. 95 (1893), the Florida Supreme Court recognized the "right of a parent, or one standing in loco parentis, to moderately chastise for correction a child under his or her control and authority." This bill would not remove this right from parents. As stated in *Raford*, "a parent may assert as an affirmative defense his or her parental right to administer 'reasonable' or 'nonexcessive' corporal punishment, i.e., a typical spanking, in a prosecution for simple child abuse."[10]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[10] *Raford v. State*, 828 So.2d 1012, 1020.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to child abuse; amending s. 827.03, F.S.; revising the definition of the term "child abuse" to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a criminal penalty; defining the term "inappropriate or excessively harsh corporal discipline"; reenacting ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, removing minors from the state or concealing minors contrary to state agency order or court order, and when arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 827.03, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.--

(1) "Child abuse" means:

(a) Intentional infliction of physical or mental injury upon a child;

(b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; ~~or~~

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child; or~~.~~

(d) Inappropriate or excessively harsh corporal discipline of a child by a parent, legal custodian, or caregiver.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) For purposes of this section, "inappropriate or excessively harsh corporal discipline" means an act of discipline that results or could reasonably be expected to result in any of the following or other similar injuries:

(a) Sprains, dislocations, or cartilage damage.

(b) Bone or skull fractures.

(c) Brain or spinal cord damage.

(d) Intracranial hemorrhage or injury to other internal organs.

(e) Asphyxiation, suffocation, or drowning.

(f) Injury resulting from the use of a deadly weapon.

(g) Burns or scalding.

(h) Cuts, lacerations, punctures, or bites.

(i) Disfigurement.

(j) Loss or impairment of a body part or function.

(k) Significant bruises or welts.

(l) Mental injury, as defined in s. 39.01.

Section 2. For the purpose of incorporating the amendment made by this act to section 827.03, Florida Statutes, in a reference thereto, paragraph (a) of subsection (9) of section 775.082, Florida Statutes, is reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.--

(9)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

a. Treason;

b. Murder;

c. Manslaughter;

d. Sexual battery;

e. Carjacking;

f. Home-invasion robbery;

g. Robbery;

h. Arson;

i. Kidnapping;

j. Aggravated assault with a deadly weapon;

k. Aggravated battery;

l. Aggravated stalking;

m. Aircraft piracy;

n. Unlawful throwing, placing, or discharging of a destructive device or bomb;

o. Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of a dwelling or burglary of an occupied structure; or

r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state

attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

Section 3. For the purpose of incorporating the amendment made by this act to section 827.03, Florida Statutes, in a reference thereto, subsection (5) of section 787.04, Florida Statutes, is reenacted to read:

787.04 Removing minors from state or concealing minors contrary to state agency order or court order.--

(5) It is a defense under this section that a person who leads, takes, entices, or removes a minor beyond the limits of the state reasonably believes that his or her action was necessary to protect the minor from child abuse as defined in s. 827.03.

Section 4. For the purpose of incorporating the amendment made by this act to section 827.03, Florida Statutes, in a reference thereto, subsection (8) of section 901.15, Florida Statutes, is reenacted to read:

901.15 When arrest by officer without warrant is lawful.--A law enforcement officer may arrest a person without a warrant when:

(8) There is probable cause to believe that the person has committed child abuse, as defined in s. 827.03. The decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1491 Children in Foster Care
SPONSOR(S): Gibson, A.
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Choice & Innovation Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates a Community Advisory Panel on Foster Care Pilot Program in Duval County. It provides that the purpose of the pilot program is to identify educational needs and follow-up strategies for foster children age six through 12 years enrolled in the Duval County school system. The goal of the program is to ensure that children in foster care will be tested appropriately and placed in an educational environment that optimizes their opportunities for success.

The community-based care provider in Duval County is given responsibility for administering the pilot program and is directed to employ a full-time project coordinator and a full-time psychologist for the program.

The chief judge for the Fourth Judicial Circuit or his or her designee is directed to create the Community Advisory Panel on Foster Care. The chief judge who is responsible for dependency and adoption in the Fourth Judicial Circuit or his or her designee is directed to appoint four members of the 15-member panel, and to chair the panel. The remaining members are to be selected by the Department of Children and Family Services (DCF), the county school board, and the guardian ad litem program for Duval County.

The bill describes the duties of the panel and of the project coordinator for the pilot project. It requires the development of a research component of the program and provides that the program will expire on July 1, 2009.

The bill includes an appropriation of $300,000 from the General Revenue Fund to the Fourth Circuit Court in Duval County to be used to implement the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill establishes a pilot for foster children age six through 12 years enrolled in the Duval County school system.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Department of Children and Family Services (DCF), case plans that are developed for children in foster care contain statements related to the educational needs of those children, and the service providers are expected to work with the schools to meet these needs. However, there is currently no mechanism in place to assess the educational needs of children in foster care and to facilitate meeting those needs.

Current law requires DCF to enter into interagency agreements with the Department of Education and local school boards regarding educational issues relating to children known to the department.[1] District school boards are required to identify all educational and other services provided by the school and district school boards which they believe are reasonably necessary to meet the educational requirements of children known to the department.[2] Also, the district school board is required to provide individualized student intervention or an individual educational plan when a determination has been made through legally appropriate criteria that intervention services are required.[3] DCF and the district school boards are required to cooperate in accessing the appropriate services for children known to the department who have or are suspected to have a disability. This section allows the school district to share information regarding children known to the department with DCF.[4]

In response to the requirements of s. 39.0016, F.S., DCF reports that an interagency agreement has been reached and is currently being circulated for signatures. The parties to the agreement are the Duval County Board of Education, DCF, Family Support Services of North Florida (the community-based care lead agency for Duval County), and the Agency for Workforce Innovation. In addition, the community-based care lead agency participates in the Duval County Court Improvement Project. The issue of educational needs of children known to DCF is a standing agenda item for that group, included on the action plan for follow-up as needed. The lead agency also participates in the special work group developed by Duval County Circuit Judge David Gooding, established to improve services for foster children. This group recommended the pilot project created by this bill.

The Bill

This bill creates a Community Advisory Panel on Foster Care Pilot Program in Duval County. It provides that the purpose of the pilot program is to identify educational needs and follow-up strategies for foster children age six through 12 years enrolled in the Duval County school system. The goal of the program is to ensure that children in foster care will be tested appropriately and placed in an educational environment that optimizes their opportunities for success.

The community-based care provider in Duval County is given responsibility for administering the pilot program and is directed to employ a full-time project coordinator and a full-time psychologist for the program. The chief judge for the Fourth Judicial Circuit or his or her designee is directed to create the

[1] See s. 39.0016(3), F.S.
[2] See s. 39.0016(4)(b)2., F.S.
[3] See s. 39.0016(4)(b)4. F.S.
[4] See s. 39.0016(4)(c), F.S.

Community Advisory Panel on Foster Care.

The chief judge responsible for dependency and adoption in the Fourth Judicial Circuit or designee is directed to appoint four members of the 15-member panel, and to chair the panel. The other members are to be selected by the Department of Children and Family Services (DCF) (four members), the county school board (four members), and the guardian ad litem program for Duval County (three members).

The bill describes the duties of the panel and of the project coordinator for the pilot project. These duties include reviewing the academic progress, behavioral issues, and attendance of each student age six to 12 who are in the foster care system in Duval County. It authorizes the panel to prioritize the referral of these children for services by assessing the severity of need and recommending that the most critical needs be addressed first. It requires that students who are failing must be referred for educational testing and for additional psychological and therapeutic counseling as recommended, or both, and that the reasons for the school failure be determined as well as any remediation needed.

It requires the development of a research component of the program. This research component, or assessment tool, must be developed by the project coordinator. The research data must be set up to link systems among providers of educational services, psychological services, case management, and the court system. The tasks to be accomplished by the designer of the assessment tool are set forth as:

- **Discovery** – including meeting with information technology staff from DCF, school board staff, and caseworkers;
- **Development** – consisting of determining the best method for data entry, the best database, and the best data format;
- **Implementation** – comprising completing, testing, and delivering the tool; and
- **Maintenance** – involving developing a maintenance plan and schedule after the initiation of the assessment methodology.

The project manager is required to submit an annual report to the court, the President of the Senate, and the Speaker of the House of Representatives.

The bill provides that the pilot program will expire on July 1, 2009.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of the Florida Statutes relating to the creation of the Community Advisory Panel on Foster Care Pilot Program.

Section 2. Provides for a $300,000 appropriation from the General Revenue Fund to implement the provisions of the bill.

Section 3. Provides an effective date July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill includes an appropriation of $300,000 from the General Revenue Fund to the Fourth Circuit Court in Duval County to be used to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Children and Family Services (DCF), the $300,000 appropriation will be sufficient to implement the provisions of the bill. As the provision is currently drafted, however, the funds are directed to the Fourth Circuit Court as opposed to DCF. Staff at DCF suggest that this is problematic because the funding goes to the court without instruction to then contract with the community-based care agency to supply funding for the two full-time staff positions that would be housed under the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 29-30 of the bill, it states, "The community-based care shall administer the pilot program." The term "provider" or "lead agency" should probably be inserted after "community-based care since DCF contracts with the lead agency for foster care services in Duval County.

The Department of Children and Family Services and the Office of the State Courts Administrator are not among those listed in the bill as receiving the annual report. Because the pilot program crosses agency lines, it may be helpful to include these entities as recipients of the report.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to children in foster care; providing for the creation of the Community Advisory Panel on Foster Care Pilot Program in Duval County; providing purposes and goals; providing for administration of the program by community-based care; providing for hiring personnel; creating the Community Advisory Panel on Foster Care; providing for panel membership; providing for a chairperson; providing duties of specified county judges, the personnel, and the panel; requiring research to determine the effectiveness of the program; requiring an annual report to the court and to legislative leaders; providing for future expiration of the pilot program; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Community Advisory Panel on Foster Care Pilot Program; creation; purpose; administration; panel membership; duties of court and panel; evaluation.--

(1) There is created the Community Advisory Panel on Foster Care Pilot Program in Duval County. The purpose of the program is to identify educational needs and followup strategies for foster children who are 6 through 12 years of age and are enrolled in the Duval County school system. The goal of the program is to ensure that youth who are in foster care will be tested appropriately and placed in an educational environment that optimizes their opportunities for success.

(2) The community-based care (CBC) shall administer the pilot program. The CBC shall employ a full-time project coordinator who shall assist the student's case manager in identifying resources for such assessment and treatment. The CBC shall also employ a full-time psychologist who will provide advice, research, assessments, and other services to the judges and to foster children and their families.

(3) The chief judge for the Fourth Judicial Circuit or his or her designee shall create the Community Advisory Panel on Foster Care, which will consist of 15 community volunteers who are community leaders that have diverse areas of expertise and talent. The chief judge who is responsible for dependency and adoption in the Fourth Judicial Circuit or his or her designee shall appoint four members of the panel; the Department of Children and Family Services shall appoint four members; the county school board shall appoint four members; and the guardian ad litem for Duval County shall appoint three members. The judge shall chair the panel.

(4) The judge may issue orders and obtain educational information relating to students who are 6 to 12 years of age and are in the foster care system in District IV of the department. The panel shall review the academic progress, behavioral issues, and attendance of each student and shall recommend referral of any student for whom the review demonstrates a need for followup services. The panel may prioritize referrals by assessing the severity of need and recommending that the most critical needs be met first. A student who is failing must be referred for educational testing,

for additional psychological and therapeutic counseling as recommended, or for both, to determine why he or she is failing and what accommodations and remediation are needed.

(5) The project coordinator shall oversee the development of a research component, or assessment tool, that is designed to determine the effectiveness of the pilot program.

(a) The research data must be set up to link systems among providers of educational services, psychological services, case management, and the court system.

(b) The entity that designs the assessment tool must, during the first year of the pilot program, undertake the following tasks:

1. Discovery. This phase includes meeting with information technology staff from the department, school board staff, and caseworkers.

2. Development. This phase consists of determining the best method for data entry, the best database, and the best data format.

3. Implementation. This phase comprises completing, testing, and delivering the assessment tool.

4. Maintenance. This phase involves developing a maintenance plan and schedule, after the initiation of the assessment methodology.

(6) The project coordinator shall submit an annual report to the court and to the President of the Senate and the Speaker of the House of Representatives.

(7) The pilot program expires on July 1, 2009.

Section 2. The sum of $300,000 is appropriated from the

General Revenue Fund to the Fourth Circuit Court in Duval County for the 2006-2007 fiscal year, to be used in implementing the Community Advisory Panel on Foster Care Pilot Program created in section 1 of this act.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7151 PCB CJ 06-02 Adoption
SPONSOR(S): Civil Justice Committee and Mahon
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	7 Y, 0 N	Shaddock	Bond
1) Future of Florida's Families Committee		Davis	Collins
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides a mechanism for the Department of Health to receive a notification of the filing of a petition for termination of parental rights. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

The bill also modifies the statute of repose related to adoption by providing that the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. Absent such a showing a person with indirect interest lacks standing to set aside a judgment of adoption.

This bill does not appear to have a fiscal impact on state or local governments.

Please see Effect of Proposed Changes section and Drafting Issues or Other Comments section for Future of Florida's Families Committee's analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: This bill strengthens families inheritance rights by clarifying that an adopted person has the same rights of inheritance as a blood descendant.

Provides Limited Government: The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Future of Florida's Families Committee:

The 2003 Florida Adoption Act: The 2003 Florida Adoption Act (Chapter 2003-58, L.O.F.), substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father."

Specific changes made by the 2003 legislation included:

- Deleting the statutory duty of a mother placing a child up for adoption to identify a potential unmarried biological father.
- Allowing for pre-birth execution of an affidavit of non-paternity.
- Broadening the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expanding placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revising venue provisions to include four primary venue options and waiver of venue.
- Revising a number of statutory timeframes including:

    1. Reducing the statute of repose period from two years to one year for any challenge to an adoption or termination of parental rights;
    2. Reducing in half the time period between the date of personal or constructive service and the date of a final hearing;
    3. Extending the time period from seven to 14 days in which to make adoption disclosures to birth and prospective adoptive parents;

4. Extending from 24 hours to seven days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Families (department or DCF); and
5. Changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement;

- Revising the statutory forms for consent to adoption, for adoption disclosure, for notice of service of process, for affidavits of non-paternity and for waiver of venue to conform to changes in the bill in those areas.

- Revising provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat fee representation and for birth mothers by expanding recovery of pre-birth and post-birth expenses.

- Deleting requirements that all proceedings for adoption be conducted by the same judge that conducted the termination of parental rights proceedings.

- Allowing private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

Civil Justice Committee:

Florida has established a Putative Father Registry ("Registry") to attempt to preserve the rights of unmarried biological fathers in adoption cases. The Registry is established and operated through the Office of Vital Statistics of the Department of Health. If a man is concerned that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the Registry.[1]

By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child. Additionally, he consents to DNA testing, and may ultimately be required to pay child support. A claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.[2]

The possible father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.[3] Once that revocation is received, the claim of paternity is deemed null and void. Plus, if a court determines that a registrant is not the father of a minor, the court will order the man's name removed from the registry.[4]

All hearings and records in adoption proceedings are confidential.[5] Court hearings are held in closed court, and all papers and records pertaining to the adoption, whether part of the permanent record of the court or a file in the office of an adoption entity, are confidential and subject to inspection only upon court order.

Generally, identifying information regarding the birth parents, adoptive parents, and adoptee may not be disclosed unless that person has authorized in writing the release of that information. Yet, a court may, upon petition of an adult adoptee, for good cause shown, appoint an intermediary or a licensed child-placing agency to contact a birth parent who has not registered with the adoption registry and advise them of the availability of the registry.

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[1] Section 63.054 (1), F.S.
[2] *Id.*
[3] Section 63.054 (5), F.S.
[4] *Id.*
[5] Section 63.162, F.S.

The statute of repose provides that an action to set aside a judgment of adoption or a judgment terminating parental rights may not be filed more than one year after the entry of the judgment terminating parental rights.

Effect of Bill

In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

The bill directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

Finally, the bill makes a change regarding inheritance rights. Except for the specific persons entitled to be given notice of an adoption, the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption. This applies to all adoptions, including those in which a judgment of adoption has already been entered.

C. SECTION DIRECTORY:

Section 1. Amends s. 63.054, F.S., to require notification of a filing of a petition for termination of parental rights.

Section 2. Amends s. 63.062(4), F.S., relating to an affidavit of non-paternity.

Section 3. Amends s. 63.182, F.S., relating to the statute of repose.

Section 4. Provides this bill will be effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Future of Florida's Families Committee has the following potential Constitutional concerns:

Case Law History:

The Florida Supreme Court recently interpreted language in s. 39.806(1)(d), F.S., which is identical to language currently in s. 63.089(4)(b)1, F.S. This language allows incarceration of a parent to be the basis for a finding of abandonment of a child supporting the termination of the parental rights of the incarcerated parent when "the period of time for which the parent is expected to be incarcerated will constitute a **substantial** portion of the period of time before the child will attain the age of 18 years (emphasis added)." In *B.C. vs. DCF*, 887 So.2d 1046 (Fla. 2004), the Court held that: (1) the statutes listing incarceration as a ground for termination of parental rights require the court to evaluate whether the time for which a parent is expected to be incarcerated **in the future** constitutes a substantial portion of the time before the child reaches the age of 18; (2) the father's remaining sentence of four years did not constitute a substantial portion of time before his child reached the age of 18 (the child was four years old at the time of the hearing); (3) for purposes of terminating parental rights on the ground of incarceration, a trial court should measure the time of remaining incarceration and minority from the date the termination petition is filed. The Florida Supreme Court had previously ruled, and this decision reaffirmed, that incarceration alone does not, as a matter of law, authorize termination of parental rights on the basis of abandonment. While the *B.C.* ruling was one of statutory interpretation, the Court based its interpretation on the long-established Constitutional principal that parental rights constitute a fundamental liberty interest. For this reason, at least when termination of parental rights is sought based on this ground in chapter 39, the State (petitioner) must, in order to prevail, establish that the termination is the least restrictive means of protecting the child from serious harm, *id* at 1053-1054.

The fundamental liberty interest in raising one's children has caused both the U.S. Supreme Court and the Florida Supreme Court to rule that when that when termination of parental rights is sought and the parent is indigent, the parent may be entitled to representation by appointed counsel.

In Department of Health and Rehabilitative Services vs. Privette, *617 So.2d 305, 1993,* the court found that there must be clear and compelling reason based primarily on a child's best interest to overcome a presumption of legitimacy even after the legal father is proven not to be the biological father. This is at least the equivalent of a burden of proof that would exist in proceedings to terminate a legal father's parental rights.

Privette, went on to say:

> " This conclusion is especially compelling in light of the fact that we must establish a neutral rule applicable to all cases of this type. While there may be some cases where the child has had little contact with the legal father, other cases will be quite the contrary. It is conceivable that a man who has established a loving, caring relationship of some years' duration with his legal child later will prove not to be the biological father. Where this is so, it seldom will be in the children's best interest to wrench them away from their legal fathers and judicially declare that they now must regard strangers as their fathers."

Rights of unwed fathers: The United States Supreme Court has protected a putative father's parental rights when he has established a substantial relationship with his child. A substantial relationship is the existence of a biological link, and the father's commitment to the responsibilities of fatherhood by participating in his child's upbringing.[6] The mere existence of a biological link does not merit constitutional protection.[7] The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.[8]

The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

Case law permits certain persons to intervene in adoption proceedings. Florida Rule of Civil Procedure 1.230 governs intervention in civil actions. The rule provides that anyone with an interest in pending litigation may be permitted to intervene in the action. The Florida Supreme Court has explained when intervention should be permitted in adoption cases:

- Generally, the interest which entitles a person to intervene must be shown to be in the matter in litigation. The interest must be direct and immediate and the intervenor must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of indirect, inconsequential or contingent interest is wholly inadequate.[9]

- Whether intervention is allowed is determined on a case by case basis.[10]

One potential concern is whether the "test" established in this bill of direct, financial and immediate is sufficiently clear enough to establish what is in the child's best interest. Without defining what indirect, inconsequential, or contingent means, courts could inconsistently apply this standard.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

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[6] See Lehr v. Robertson, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state's failure to give a putative father notice of pending adoption proceedings, despite the state's actual notice of his existence and whereabouts, did not deny him due process or equal protection, since he could have guaranteed that he would have received notice by mailing a postcard to the putative father registry.

[7] See Lehr at 261.

[8] See In the Matter of the Adoption of Doe, 543 So.2d 741, 748 (Fla. 1989).

[9] Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996).

[10] See Stefanos, 673 So. 2d at 13-14 (holding that a person who has had parental rights terminated may not intervene in an ongoing adoption proceeding); In re Adoption of a Minor Child, 593 So. 2d 185 (Fla. 1991)(allowing grandparents to intervene); Rickard v. McKesson, 774 So. 2d 838 (Fla. 4th DCA 2000)(allowing potential trust beneficiary to intervene).

- In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

- Alters the provisions regarding who may execute an irrevocable affidavit of paternity.

- Directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry.

- Makes a change regarding inheritance rights to clarify that an adopted person has the same rights of inheritance as a blood descendant.

- Removes the provision that would authorize the Department of Health to release an original sealed birth certificate on court order only to the Department of Children and Family Services.

The bill was then reported favorably.

A bill to be entitled

An act relating to adoption; amending s. 63.054, F.S.; requiring a petitioner in a proceeding for termination of parental rights to provide notice to the Office of Vital Statistics of the Department of Health; prohibiting the office from recording a claim of paternity after the date that a termination of parental rights is filed; requiring the department to remove a registrant's name from the Florida Putative Father Registry upon a finding that the registrant has no parental rights; amending s. 63.062, F.S.; modifying consent required for adoption; amending s. 63.182, F.S.; providing that the interest that entitles a person to notice of an adoption must be direct, financial, and immediate; providing an exception; providing that a showing of an indirect, inconsequential, or contingent interest is wholly inadequate; providing construction and applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (5) of section 63.054, Florida Statutes, are amended to read:

63.054 Actions required by an unmarried biological father to establish parental rights; Florida Putative Father Registry.--

(1) In order to preserve the right to notice and consent to an adoption under this chapter, an unmarried biological father must, as the "registrant," file a notarized claim of

paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health and shall include therein confirmation of his willingness and intent to support the child for whom paternity is claimed in accordance with state law. The claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights. In each proceeding for termination of parental rights, the petitioner shall submit to the Office of Vital Statistics of the Department of Health a copy of the petition for termination of parental rights. The Office of Vital Statistics of the Department of Health shall not record a claim of paternity after the date that a petition for termination of parental rights is filed.

(5) The registrant may, at any time prior to the birth of the child for whom paternity is claimed, execute a notarized written revocation of the claim of paternity previously filed with the Florida Putative Father Registry, and upon receipt of such revocation, the claim of paternity shall be deemed null and void. If a court determines that a registrant is not the father of the minor or has no parental rights, the court shall order the Department of Health to remove the registrant's name from the registry.

Section 2. Subsection (4) of section 63.062, Florida Statutes, is amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.--

(4) Any person whose consent is required under paragraph (1)(b), or any other man, ~~paragraphs (1)(c)-(e)~~ may execute an irrevocable affidavit of nonpaternity in lieu of a consent under this section and by doing so waives notice to all court proceedings after the date of execution. An affidavit of nonpaternity must be executed as provided in s. 63.082. The affidavit of nonpaternity may be executed prior to the birth of the child. The person executing the affidavit must receive disclosure under s. 63.085 prior to signing the affidavit.

Section 3. Section 63.182, Florida Statutes, is amended to read:

63.182 Statute of repose.--

(1) Notwithstanding s. 95.031 or s. 95.11 or any other statute, an action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights on any ground may not be filed more than 1 year after entry of the judgment terminating parental rights.

(2)(a) Except for the specific persons expressly entitled to be given notice of an adoption in accordance with this chapter, the interest that entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption.

(b) This subsection is remedial and shall apply to all

adoptions, including those in which a judgment of adoption has already been entered.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FFF 06-02 Child Support
SPONSOR(S): Future of Florida's Families Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee		Preston	Collins
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends ss. 61.13 and 61.14, Florida Statutes, to provide for the reduction and termination of a child support order as children named in the order reach the age of majority or otherwise become emancipated and to provide for temporary modification of an order under certain specified circumstances.

The bill amends s. 61.30, Florida Statutes, relating to child support guidelines. Provisions of the bill include:

- New language that reflects Florida's use of the income shares model as the basis for its child support guidelines schedule and state the purposes of the guidelines;
- Simplification of the concept of rebuttable presumption and clarification of when the court must provide a written finding when deviating from the guideline amount of an award;
- New provisions relating to the imputation of income for purposes of determining the amount of a child support award;
- Clarification that child care costs and health care costs are not built into the guideline schedule and are expenses that are added on to the basic child support obligation;
- Elimination of an automatic reduction in child care costs related to the 25% federal child care credit;
- Elimination of the 40% threshold in shared parenting time for a setoff in the amount of a child support award;
- A formula for determining the amount of a child support award reflective of all levels of shared parenting time that results in a gradual adjustment rather than the current "cliff effect";
- An explanation of the term "split parenting arrangement" and direction for calculating child support awards when those arrangements exist; and
- The transfer of responsibility for the implementation and review of the child support guidelines from the Legislature to the court.

The bill amends s. 409.2564, Florida Statutes, relating to actions for support, to reduce the arrearage threshold for denial of a passport.

The bill also amends s. 409.25641, Florida Statutes, relating to automated administrative enforcement in interstate cases, to provide states with the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

There is no anticipated fiscal impact on either state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill moves responsibility for the review and implementation of the child support guidelines from the Legislature to the court.

Promote personal responsibility – The bill lowers the threshold for the amount of arrearage owed by a child support obligor for purposes of passport denial.

Empower families – If child support award amounts better reflect shared parenting arrangements, collections may increase and noncustodial parents may spend more time with their children.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1984, Congress recognized potential value in requiring states to implement guidelines to be used in the determination of the amount of the child support obligation. The federal Child Support Amendments of 1984 required states to establish non-binding child support guidelines either by law, or judicial or administrative action no later than October 1, 1987.[1] The Family Support Act of 1988 made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years in order to ensure that their application results in child support award amounts that are appropriate. As a part of the review process, states must analyze case data related to the application of, and deviations from, the guidelines and they must also consider economic data related to the cost of raising children.[2] With the exception of these two requirements, states have broad discretion and latitude in conducting guideline reviews.

In requiring the adoption and use of presumptive guidelines, the federal government had four primary objectives:

- to enhance the adequacy of child support orders;
- to improve the equity of orders by assuring more comparable treatment for cases with similar circumstances;
- to increase compliance as a result of the perceived fairness of child support awards; and
- to improve the efficiency of adjudicating child support orders.

The Florida House of Representatives has traditionally taken the lead in completing the reviews to meet the federal mandate. In spite of timely guideline reviews and some statutory changes, the Florida Legislature has not adjusted the guidelines schedule since 1993. Since the underlying data for the current schedule enacted in 1993 is the 1972-1973 Consumer Expenditure Survey, the schedule is considerably out of date. In addition, other provisions of the guidelines may no longer adequately reflect the needs and circumstances of Florida families.

In preparation for the current review, the Legislature allocated funds for an economic review of the state's child support guidelines.[3] In February 2003, the Legislature contracted with the Department of Economics at Florida State University. The analysis undertaken by the researchers consisted of three tasks:

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[1] Child Support Enforcement Amendments of 1984, 42 U.S.C. 657-662 (1984).
[2] Family Support Act of 1988, 42 U.S.C. 654, 666-667 (1988).
[3] See SB 2000 (2001) and HB 27E (2002).

- To update the existing Florida schedule of child support obligations based on the most recent data available on expenditures on children;
- To review three special issues relating to child support guidelines and to make recommendations for changes in Florida's treatment of these issues. The three issues are the treatment of low-income parents, provisions for visitation and alternative custody arrangements, and the treatment of prior and subsequent children; and
- To review alternative models for the development of child support guidelines and possibly recommend a different model for use in Florida.

In addition, two issues that were not a part of the original scope of work but were addressed in the report: the treatment in the guidelines of the tax benefits associated with children, and the treatment of child care related expenses.[4]

The final report was delivered to the Legislature in March 2004 and presentations were made on findings and recommendations to the Future of Florida's Families Committee during the 2004 and 2005 legislative sessions. Work continued during the interims in preparation for the development of proposed legislation for possible introduction during the 2006 legislative session. Findings in the report centered around three major issues: the support schedule, the treatment of low income obligors, and the treatment of various parental sharing arrangements.

- **Updating Florida's Child Support Guidelines Schedule**

Florida's current schedule of child support guidelines is based on the income shares model. The income shares model determines the amount of child support obligations from estimated average expenditures on children in an intact family as a function of the combined income of the parents. The model was developed by Robert Williams from an analysis of expenditures on children by Thomas Espenshade.[5] Espenshade based his analysis on Ernst Engel's[6] approach to comparing living standards among families.

In the schedule proposed in the FSU report, the basic support obligations are lower at most income levels than those in the current schedule, with differences being relatively small except at the higher income levels. However, the amounts in the proposed guidelines are greater than those in the existing guidelines for families with low incomes and multiple children.

Using a representative sample of Florida child support cases, it was determined that for approximately 60% of the Title IV-D cases in the sample the average child support payment changes very little from the current schedule. Only for the 20% of cases in the IV-D sample with the highest incomes would the average payment change substantially. Similarly, in 40% of the private cases there is almost no change in the average child support payment. For the top 20% the average payment decreases substantially, and the average payment for the middle 40% decreases slightly. Applying the proposed schedule of basic child support obligations to the actual distribution of the child support cases in Florida indicates that the effect of the proposed schedule would be minimal for most cases. Only the top 20% of cases ranked by income would see a significant change in the amount of child support payments. In those cases, payments would decrease substantially.

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[4] See Updating Florida's Schedule of Child Support Obligations, Final Report to the Florida Legislature, Department of Economics, Florida State University, March 5, 2004.

[5] See Espenshade, T. J. (1973). The Cost of Children in Urban United States. Westport, Connecticut: Greenwood Press and Espenshade, T. J. (1984). Investing in Children: New Estimates of Parental Expenditures. Washington, D.C.: The Urban Institute Press.

[6] The underlying assumption of the Engel approach is that families of a different size that spend equal proportions of their incomes on food are equally well-off. The Engel approach assumes that as total spending increases, the budget share or percent devoted to food should decrease, freeing up expenditures for other goods, and that as family size increases, the food share of the budget should also increase.

- **Low-Income Parents**

Child support obligations that are derived from the income shares methodology typically include an adjustment for low-income parents to ensure that parents owing child support are not living in poverty due to the obligation to provide support. The low-income adjustment in Florida's current guidelines applies to only about one percent of cases and is therefore ineffective at preventing or mitigating poverty among low-income parents. This ineffectiveness is primarily a result of four features of the current guidelines:

- The use of combined income of both parents with the single person poverty threshold;
- The application of the low-income provisions to the basic obligation rather than to the total obligation;
- The failure to update the child support schedule on a regular basis to reflect increases in the poverty guideline; and
- The imputation of income.

In addition, Florida's current schedule of child support obligations is regressive, which penalizes noncustodial parents who earn additional income and therefore serves as a disincentive to work. By imposing a very high marginal rate on additional earnings, it also discourages compliance. In fact, the compliance rate among low-income noncustodial parents is very low, which in turn presents a barrier to the involvement of the noncustodial parent with the children.

- **Visitation and Custody**

Florida law currently provides that in shared parenting arrangements where a child spends less than 40 percent of overnights per year with the noncustodial parent, the court may use that arrangement as grounds for an adjustment in the amount of the child support obligation. A shared parenting arrangement where the number of overnights spent with the noncustodial parent exceeds 40 percent requires the court to adjust the noncustodial parent's support obligation to reflect the additional costs of maintaining two households for the child.

Failure to provide any adjustment where time spent with the noncustodial parent does not equal or exceed 40 percent may act as a disincentive for regular visitation with the noncustodial parent. Further, setting a threshold results in very large changes in the noncustodial parent's child support obligation in response to very small changes in the amount of visitation. For this reason, the existence of a threshold can be a source of excessive dispute and litigation between parents.

Currently, Florida's child support guidelines are silent regarding split custody arrangements. As a result, determination of the amount of the basic support obligation in such cases is left to the discretion of the courts without any statutory guidance on dealing with this type of living arrangement. This gives rise to disparate treatment of these cases in different judicial districts, and can also be a source of dispute and litigation over living arrangements. Failure to provide explicitly for split custody may discourage parents from adopting this arrangement even when it is in the best interests of the child.

The Bill

With regard to the three major sets of findings resulting from the FSU study, the bill retains the existing child support guidelines schedule, it continues the current treatment of low income families, it eliminates the 40% threshold for shared parenting arrangements by providing for a continuous adjustment to child support award amounts, and it defines split shared parenting arrangements and provides direction for calculating the amount of an award in such circumstances. The bill also contains the following provisions related to child support guidelines and orders:

- New language that reflects Florida's use of the income shares model as the basis for its child support guidelines schedule and states the purposes of the guidelines schedule;

- Simplification of the concept of rebuttable presumption and clarification of when the court must have a written finding when deviating from the guideline amount of an award;
- New provisions relating to the imputation of income for purposes of determining the amount of a child support award;
- Clarification that child care costs and health care costs are not built into the guideline schedule and are expenses that are added on to the basic child support obligation;
- Elimination of an automatic reduction in child care costs related to the 25% federal child care credit; and
- Direction for transferring responsibility for the implementation and review of the child support guidelines from the legislature to the court.

In addition, the bill contains two provisions related to the enforcement of child support orders:

- Reduction of the arrearage threshold for denial of a passport; and
- Giving states the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.13, F.S., relating to custody and support of children, visitation rights, and the powers of the court in making orders.

Section 2. Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements.

Section 3. Amends s. 61.30, F.S., relating to the child support guidelines and retroactive support.

Section 4. Amends s. 409.2564, F.S., relating to actions for support.

Section 5. Amends s. 409.25641, F.S., relating to procedures for processing automated administrative enforcement requests.

Section 6. Amends s. 409.2563, F.S., relating to administrative establishment of child support obligations, to conform cross references.

Section 7. Amends s. 742.031, F.S., relating to hearings, court orders for support, hospital expenses, and fee related to paternity actions, to conform

Section 8. Provides an effective date of October 1, 2006, unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to child support; amending s. 61.13, F.S.; providing for automatic termination of support for a child when the child is no longer eligible for support; specifying conditions that render a child ineligible; requiring either or both parents who owe support to secure or object to the termination of a child support award; requiring certain notice to a parent; authorizing the court to retroactively terminate or modify a child support award under certain circumstances; amending s. 61.14, F.S.; providing for a temporary reduction in child support under specified circumstances; authorizing the court to grant certain forms of temporary relief; amending s. 61.30, F.S.; providing for use of the income shares model; providing legislative findings; providing purposes of the child support guidelines; providing that the amount of a child support award resulting from the application of the child support guidelines schedule creates a rebuttable presumption of correctness; providing circumstances in which specified variances in awards require a written finding; providing for the determination of gross income; providing for the imputation of income under certain circumstances; providing for the determination of net income; providing the child support guidelines schedule; providing for determination of the amount of child support for low-income and high-income parents; providing for child care costs and health care costs to be added to the minimum obligation; deleting provisions relating to calculation of each parent's share of the child support

need; revising factors to be considered by the court in adjusting child support awards; providing for shared parenting arrangements; providing for calculation of child support orders in cases of split parenting arrangements; specifying the method for determining a child support order amount; providing for modification of existing orders; requiring submission of financial affidavits; providing for the consideration of subsequent children; providing for income information in the event of noncooperation by a public assistance recipient for purposes of child support; providing for review of the child support guidelines; providing for retroactive child support; amending s. 409.2564, F.S.; providing a threshold for arrearages before passport restrictions apply; amending s. 409.25641, F.S.; requiring the Department of Revenue to employ automated administrative enforcement of support orders in interstate cases; authorizing the department to establish a corresponding case under certain circumstances; amending ss. 409.2563 and 742.031, F.S.; conforming cross-references; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 61.13, Florida Statutes, are amended to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.--

(1)(a) In a proceeding under this chapter, the court may at any time order either or both parents who owe a duty of support

to a child to pay support in accordance with the child support guidelines in s. 61.30.

1. The order shall provide a schedule, based upon the financial circumstances in existence at the time of the order, setting forth the amount of child support owed for the remaining minor children for whom support will be owed when each child reaches majority or is no longer eligible for support. The support obligation for each child shall automatically terminate when that child is no longer eligible to receive support as set forth in the order or in s. 743.07(2) or when the child is fully emancipated, is married, or is deceased. When a child is no longer eligible for support, either parent shall send a notice by certified mail, return receipt requested, to the address of the other parent and to the child support enforcement agency and file the notice with the court along with the return receipt. The other parent shall have 10 days after receipt of the notice to object to the termination of support. The objection shall provide the reasons for the objection, shall be sent by certified mail, return receipt requested, to the address of the parent who sent the original notice and to the child support enforcement agency, and shall be filed with the court along with the return receipt. Until the dispute is resolved and the court enters an order terminating or modifying the child support obligation, the parent shall continue to pay child support. If no objection is timely filed with the court, the parent who sent the original notice shall file a notification of termination or modification of child support with the court and the clerk of the court shall forward the court file to the judge who shall enter an order either retroactively terminating the child support obligation, if there

are no other minor children, or retroactively amending the child support obligation and entering a new income deduction order to reflect the appropriate amount of support for the remaining minor children, based upon the most recently entered support order. The court shall send a copy of such orders to the obligor, obligee, and child support enforcement agency. The court order terminating or modifying child support deductions and the new income deduction order shall be provided by certified mail, return receipt requested, by the obligee to the obligor's employer instructing the employer to either cease deducting the child support or to modify the amount deducted from the obligor's income based on the new income deduction order.

2. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments when the modification is found necessary by the court in the best interests of the child, when the child reaches majority, or when there is a substantial change in the circumstances of the parties, notwithstanding the automatic termination set forth in subparagraph 1. If the child support obligation does not automatically terminate as set forth in subparagraph 1. and the obligor is forced to file an action to terminate support for a child no longer entitled to receive support, the termination shall be retroactive to the date the child was no longer eligible to receive support, regardless of when the action is filed. If the obligee receives support for a child who is no longer eligible to receive support, the obligee is required to reimburse the obligor the amount of the overpayment, which may be ordered

to be paid in one lump sum or in installments over a period of time, at the discretion of the court based on the financial circumstances of the party who is responsible for the repayment.

3. The court initially entering a child support order shall also have continuing jurisdiction to require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

(c) To the extent necessary to protect an award of child support, the court may order either or both parents who owe a duty of support to a child ~~the obligor~~ to purchase or maintain a life insurance policy or a bond~~,~~ or to otherwise secure the child support award with any other assets which may be suitable for that purpose.

Section 2. Paragraph (a) of subsection (1) and paragraph (b) of subsection (11) of section 61.14, Florida Statutes, are amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.--

(1)(a)1. When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution

of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, by filing a supplemental petition for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order.

2. A finding that medical insurance is reasonably available or the child support guidelines in s. 61.30 may constitute changed circumstances.

3.a. When the involuntary change of circumstances or financial ability has not yet been established as being permanent in nature, or when the change in circumstances is readily acknowledged as only temporary in nature, a party may file a motion for temporary relief, as opposed to a supplemental petition for modification as provided in subparagraph 1. This motion must be served in the same manner as a supplemental petition. In response to the motion, the court may grant, as appropriate, the following forms of temporary relief:

(I) A temporary reduction, abatement, or suspension of child support, with the option to enforce payment of the accrued shortfall, if appropriate, between the regular child support and the temporary obligation;

(II) An abatement or suspension of contempt or enforcement proceedings; or

(III) Such other temporary relief that the court deems just and proper.

b. As a condition of entitlement to temporary relief under this subparagraph, the movant must demonstrate that he or she:

(I) Has not precipitated the change of circumstances or financial ability to avoid meeting the existing court-ordered child support obligation.

(II) Is trying diligently to attain his or her previous income level.

c. If a subsequent modification action is filed, the court may modify an order of child support retroactively to the date of the filing of the motion.

4. Except as otherwise provided in subparagraph 3. and s. 61.30(11)(d)~~(e)~~, the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(11)

(b) The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order; to the date of filing of the initial petition for dissolution of marriage, initial petition for support, initial petition determining paternity, or supplemental petition for modification; or to a date prescribed in paragraph (1)(a) or s. 61.30(11)(d)~~(e)~~ or (18)~~(17)~~, as applicable.

Section 3. Section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; guidelines schedule; retroactive child support.--

(1) INCOME SHARES MODEL.--

(a) The state child support guidelines are based on the income shares model, which presumes that a child should receive the same proportion of parental income as he or she would have received if the parents lived together.

(b) The Legislature finds that child support is a continuous obligation of both parents, children are entitled to share in the current income of both parents, and a child's standard of living should not, to the degree possible, be negatively affected because a child's parents are not living together in the same household. The Legislature finds that children of families living in two households should be afforded the same opportunities that are available to children in families living in one household with parents who have financial resources similar to the resources of the parents who are living in two households.

(c) The Legislature finds that child support shall provide for the needs of the child. The needs of the child include, but are not limited to, direct expenses for food, clothing, school, and entertainment. The Legislature finds that child support shall also be used to provide for housing, utilities, transportation, and other indirect expenses related to the day-to-day care and well-being of the child.

(d) The Legislature further finds that in intact families the income of both parents is combined and spent for the benefit of all household members, including the children. The amount each parent contributes to the total income of the family represents his or her relative share of household expenses. This same income sharing principle is used by the income shares model to determine

how parents will share a child support award. The child support guidelines schedule as provided in subsection (6) calculates a child support award as the estimated share of each parent's income that would have been spent on the child if the parents and child were living in the same household. The amount calculated to be spent by the custodial parent on child-rearing expenses is retained by the custodial parent and is to be spent directly for the benefit of the child. The amount calculated to be spent by the noncustodial parent on child-rearing expenses represents the amount of support that is paid to the custodial parent for the benefit of the child. The amount of a child support award shall be determined without regard to the gender of the custodial parent.

(2) PURPOSES OF CHILD SUPPORT GUIDELINES.--The primary purposes of the child support guidelines are:

(a) To provide uniform procedures for establishing an adequate level of support for children, subject to the parents' ability to pay.

(b) To make child support awards more equitable by ensuring the consistent treatment of persons in similar circumstances.

(c) To reduce the adversarial nature of child support proceedings by increasing voluntary settlements due to greater predictability in the process to determine the amount of a child support award.

(d) To increase the level of compliance with child support orders as a result of the perceived fairness of the amounts of child support ordered to be paid.

(e) To improve the efficiency of the judicial process by giving courts, the child support enforcement agency, attorneys,

and parents guidance in determining the amount of child support awards.

(f) To comply with federal law.

(3) REBUTTABLE PRESUMPTION.--

(a) There shall be a rebuttable presumption in any judicial or administrative proceeding to establish a temporary or permanent order for child support, to decide whether to approve a settlement agreement for child support, or to consider requests for modifications of existing orders that the amount of child support that would result from the application of the guidelines schedule provided in subsection (6) is the correct amount of child support to be awarded. The presumption may be rebutted and the minimum child support award, or either or both parents' share of the minimum child support award, may be adjusted upward or downward upon evidence that the application of the guidelines schedule would be unjust or inappropriate in a particular case.

(b) ~~(1)(a)~~ A ~~The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact shall order as child support in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or another chapter. The trier of fact may order payment of~~ child support award which varies, plus or minus 5 percent, from the guideline amount may be ordered without a written finding~~, after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent~~. A ~~The trier of fact may order payment of~~ child support award in an amount which varies more than 5 percent from

the ~~such~~ guideline amount may be ordered only upon a written finding explaining why ordering payment of the ~~such~~ guideline amount would be unjust or inappropriate. In determining whether the application of the guidelines schedule would be unjust or inappropriate and in determining whether to vary from the presumptive child support amount in a particular case, the court shall consider all of the factors provided in subsection (10) ~~Notwithstanding the variance limitations of this section, the trier of fact shall order payment of child support which varies from the guideline amount as provided in paragraph (11)(b) whenever any of the children are required by court order or mediation agreement to spend a substantial amount of time with the primary and secondary residential parents. This requirement applies to any living arrangement, whether temporary or permanent~~.

~~(b) The guidelines may provide the basis for proving a substantial change in circumstances upon which a modification of an existing order may be granted. However, the difference between the existing monthly obligation and the amount provided for under the guidelines shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances.~~

~~(c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.~~

(4)~~(2)~~ DETERMINATION OF GROSS INCOME.--Income shall be determined on a monthly basis for each parent. ~~the obligor and for the obligee as follows:~~

(a) Gross income shall include, but is not limited to, the following ~~items~~:

1. Salary or wages.

2. Bonuses, commissions, allowances, overtime, tips, and other similar payments.

3. Business income from sources such as self-employment, partnership, close corporations, and independent contracts. "Business income" means gross receipts minus ordinary and necessary expenses required to produce income.

4. Disability benefits.

5. All workers' compensation benefits and settlements.

6. Unemployment compensation.

7. Pension, retirement, or annuity payments.

8. Social security benefits.

9. Spousal support received from a previous marriage or court ordered in the marriage before the court.

10. Interest and dividends.

11. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.

12. Income from royalties, trusts, or estates.

13. Reimbursed expenses or in kind payments to the extent that they reduce living expenses.

14. Gains derived from dealings in property, unless the gain is nonrecurring.

(b)1. Income on a monthly basis shall be imputed to an unemployed or underemployed parent when such employment or

underemployment is found by the court to be voluntary on that parent's part, absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. In the event of such voluntary unemployment or underemployment, the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community as provided in this paragraph; however, the court may refuse to impute income to a primary residential parent if the court finds it necessary for the parent to stay home with the child who is the subject of the child support calculation to care for that child.

2. In order for the court to impute income under subparagraph 1., the court must make specific findings of fact consistent with the requirements of this paragraph. The party seeking to impute income has the burden to present competent, substantial evidence:

a. That the unemployment or underemployment is voluntary.

b. That identifies the amount and source of the imputed income, including, but not limited to, an identification of a job for which the party is suitably qualified by education, experience, current licensure, and geographic location, with due consideration being given to the parties' current existing parental responsibility and time-sharing plan and their historical compliance with the plan.

3. A rebuttable presumption shall exist, which entitles the court to impute Florida minimum wage to a parent if no other evidentiary basis or mechanism for establishing a parent's gross income is available, absent a finding by the court that:

a. The parent has a physical or mental incapacity that renders the parent unemployable or underemployed;

b. The parent is obliged to stay home with a child who is the subject of the child support calculation proceedings and care for that child, thereby preventing the parent's employment or rendering the parent underemployed; or

c. There are other circumstances over which the parent has no control, except for penal incarceration, which prevents the parent from earning an income.

If evidence is produced that demonstrates that the parent is a resident of another state, the state minimum wage applicable to the parent's state of residence shall apply if it is greater than the Florida minimum wage. In the absence of a state minimum wage or if the other state's minimum wage is lower than the Florida minimum wage, the federal minimum wage shall apply.

4. Income may not be imputed beyond minimum wage requirements in subparagraph 3. based upon:

a. Income records that are more than 5 years old at the time of the hearing or trial at which imputation is sought.

b. Income at a level that a party has not previously ever earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration being given to the parties' current existing parental responsibility and time-sharing plan and their historical compliance with the plan.

(c) Public assistance as defined in s. 409.2554 shall be excluded from gross income.

(d) If recurring income is not sufficient to meet the needs of the child, the court may order child support to be paid from nonrecurring income or assets.

(5) ~~(3)~~ DETERMINATION OF NET INCOME.--

(a) Net income is obtained by subtracting allowable deductions from gross income. Allowable deductions shall include:

1. ~~(a)~~ Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

2. ~~(b)~~ Federal insurance contributions or self-employment tax.

3. ~~(c)~~ Mandatory union dues.

4. ~~(d)~~ Mandatory retirement payments.

5. ~~(e)~~ Health insurance payments, excluding payments for coverage of the minor child.

6. ~~(f)~~ Court-ordered support for other children which is actually paid.

7. ~~(g)~~ Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

(b) ~~(4)~~ Net income for each parent ~~the obligor and net income for the obligee~~ shall be computed by subtracting allowable deductions from gross income.

(c) ~~(5)~~ Net income for each parent ~~the obligor and net income for the obligee~~ shall be added together for a combined net income.

(6) CHILD SUPPORT GUIDELINES SCHEDULE.--The following schedule ~~schedules~~ shall be applied to the combined net income to determine the minimum child support amount ~~need~~:

Combined Monthly Net ~~Available~~ Income	Child or Children					
	One	Two	Three	Four	Five	Six
650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	164	166	167	169	171	173
800.00	190	211	213	216	218	220
850.00	202	257	259	262	265	268
900.00	213	302	305	309	312	315
950.00	224	347	351	355	359	363
1000.00	235	365	397	402	406	410
1050.00	246	382	443	448	453	458
1100.00	258	400	489	495	500	505
1150.00	269	417	522	541	547	553
1200.00	280	435	544	588	594	600

449	1250.00	290	451	565	634	641	648
450	1300.00	300	467	584	659	688	695
451	1350.00	310	482	603	681	735	743
452	1400.00	320	498	623	702	765	790
453	1450.00	330	513	642	724	789	838
454	1500.00	340	529	662	746	813	869
455	1550.00	350	544	681	768	836	895
456	1600.00	360	560	701	790	860	920
457	1650.00	370	575	720	812	884	945
458	1700.00	380	591	740	833	907	971
459	1750.00	390	606	759	855	931	996
460	1800.00	400	622	779	877	955	1022
461	1850.00	410	638	798	900	979	1048
462	1900.00	421	654	818	923	1004	1074
	1950.00	431	670	839	946	1029	1101

2000.00	442	686	859	968	1054	1128
2050.00	452	702	879	991	1079	1154
2100.00	463	718	899	1014	1104	1181
2150.00	473	734	919	1037	1129	1207
2200.00	484	751	940	1060	1154	1234
2250.00	494	767	960	1082	1179	1261
2300.00	505	783	980	1105	1204	1287
2350.00	515	799	1000	1128	1229	1314
2400.00	526	815	1020	1151	1254	1340
2450.00	536	831	1041	1174	1279	1367
2500.00	547	847	1061	1196	1304	1394
2550.00	557	864	1081	1219	1329	1420
2600.00	568	880	1101	1242	1354	1447
2650.00	578	896	1121	1265	1379	1473

478	2700.00	588	912	1141	1287	1403	1500
479	2750.00	597	927	1160	1308	1426	1524
480	2800.00	607	941	1178	1328	1448	1549
481	2850.00	616	956	1197	1349	1471	1573
482	2900.00	626	971	1215	1370	1494	1598
483	2950.00	635	986	1234	1391	1517	1622
484	3000.00	644	1001	1252	1412	1540	1647
485	3050.00	654	1016	1271	1433	1563	1671
486	3100.00	663	1031	1289	1453	1586	1695
487	3150.00	673	1045	1308	1474	1608	1720
488	3200.00	682	1060	1327	1495	1631	1744
489	3250.00	691	1075	1345	1516	1654	1769
490	3300.00	701	1090	1364	1537	1677	1793
491	3350.00	710	1105	1382	1558	1700	1818
	3400.00	720	1120	1401	1579	1723	1842

3450.00	729	1135	1419	1599	1745	1867
3500.00	738	1149	1438	1620	1768	1891
3550.00	748	1164	1456	1641	1791	1915
3600.00	757	1179	1475	1662	1814	1940
3650.00	767	1194	1493	1683	1837	1964
3700.00	776	1208	1503	1702	1857	1987
3750.00	784	1221	1520	1721	1878	2009
3800.00	793	1234	1536	1740	1899	2031
3850.00	802	1248	1553	1759	1920	2053
3900.00	811	1261	1570	1778	1940	2075
3950.00	819	1275	1587	1797	1961	2097
4000.00	828	1288	1603	1816	1982	2119
4050.00	837	1302	1620	1835	2002	2141
4100.00	846	1315	1637	1854	2023	2163

4150.00	854	1329	1654	1873	2044	2185
4200.00	863	1342	1670	1892	2064	2207
4250.00	872	1355	1687	1911	2085	2229
4300.00	881	1369	1704	1930	2106	2251
4350.00	889	1382	1721	1949	2127	2273
4400.00	898	1396	1737	1968	2147	2295
4450.00	907	1409	1754	1987	2168	2317
4500.00	916	1423	1771	2006	2189	2339
4550.00	924	1436	1788	2024	2209	2361
4600.00	933	1450	1804	2043	2230	2384
4650.00	942	1463	1821	2062	2251	2406
4700.00	951	1477	1838	2081	2271	2428
4750.00	959	1490	1855	2100	2292	2450
4800.00	968	1503	1871	2119	2313	2472
4850.00	977	1517	1888	2138	2334	2494

4900.00	986	1530	1905	2157	2354	2516
4950.00	993	1542	1927	2174	2372	2535
5000.00	1000	1551	1939	2188	2387	2551
5050.00	1006	1561	1952	2202	2402	2567
5100.00	1013	1571	1964	2215	2417	2583
5150.00	1019	1580	1976	2229	2432	2599
5200.00	1025	1590	1988	2243	2447	2615
5250.00	1032	1599	2000	2256	2462	2631
5300.00	1038	1609	2012	2270	2477	2647
5350.00	1045	1619	2024	2283	2492	2663
5400.00	1051	1628	2037	2297	2507	2679
5450.00	1057	1638	2049	2311	2522	2695
5500.00	1064	1647	2061	2324	2537	2711
5550.00	1070	1657	2073	2338	2552	2727

536	5600.00	1077	1667	2085	2352	2567	2743
537	5650.00	1083	1676	2097	2365	2582	2759
538	5700.00	1089	1686	2109	2379	2597	2775
539	5750.00	1096	1695	2122	2393	2612	2791
540	5800.00	1102	1705	2134	2406	2627	2807
541	5850.00	1107	1713	2144	2418	2639	2820
542	5900.00	1111	1721	2155	2429	2651	2833
543	5950.00	1116	1729	2165	2440	2663	2847
544	6000.00	1121	1737	2175	2451	2676	2860
545	6050.00	1126	1746	2185	2462	2688	2874
546	6100.00	1131	1754	2196	2473	2700	2887
547	6150.00	1136	1762	2206	2484	2712	2900
548	6200.00	1141	1770	2216	2495	2724	2914
549	6250.00	1145	1778	2227	2506	2737	2927
	6300.00	1150	1786	2237	2517	2749	2941

6350.00	1155	1795	2247	2529	2761	2954
6400.00	1160	1803	2258	2540	2773	2967
6450.00	1165	1811	2268	2551	2785	2981
6500.00	1170	1819	2278	2562	2798	2994
6550.00	1175	1827	2288	2573	2810	3008
6600.00	1179	1835	2299	2584	2822	3021
6650.00	1184	1843	2309	2595	2834	3034
6700.00	1189	1850	2317	2604	2845	3045
6750.00	1193	1856	2325	2613	2854	3055
6800.00	1196	1862	2332	2621	2863	3064
6850.00	1200	1868	2340	2630	2872	3074
6900.00	1204	1873	2347	2639	2882	3084
6950.00	1208	1879	2355	2647	2891	3094
7000.00	1212	1885	2362	2656	2900	3103

565	7050.00	1216	1891	2370	2664	2909	3113
566	7100.00	1220	1897	2378	2673	2919	3123
567	7150.00	1224	1903	2385	2681	2928	3133
568	7200.00	1228	1909	2393	2690	2937	3142
569	7250.00	1232	1915	2400	2698	2946	3152
570	7300.00	1235	1921	2408	2707	2956	3162
571	7350.00	1239	1927	2415	2716	2965	3172
572	7400.00	1243	1933	2423	2724	2974	3181
573	7450.00	1247	1939	2430	2733	2983	3191
574	7500.00	1251	1945	2438	2741	2993	3201
575	7550.00	1255	1951	2446	2750	3002	3211
576	7600.00	1259	1957	2453	2758	3011	3220
577	7650.00	1263	1963	2461	2767	3020	3230
578	7700.00	1267	1969	2468	2775	3030	3240
	7750.00	1271	1975	2476	2784	3039	3250

579							
	7800.00	1274	1981	2483	2792	3048	3259
580							
	7850.00	1278	1987	2491	2801	3057	3269
581							
	7900.00	1282	1992	2498	2810	3067	3279
582							
	7950.00	1286	1998	2506	2818	3076	3289
583							
	8000.00	1290	2004	2513	2827	3085	3298
584							
	8050.00	1294	2010	2521	2835	3094	3308
585							
	8100.00	1298	2016	2529	2844	3104	3318
586							
	8150.00	1302	2022	2536	2852	3113	3328
587							
	8200.00	1306	2028	2544	2861	3122	3337
588							
	8250.00	1310	2034	2551	2869	3131	3347
589							
	8300.00	1313	2040	2559	2878	3141	3357
590							
	8350.00	1317	2046	2566	2887	3150	3367
591							
	8400.00	1321	2052	2574	2895	3159	3376
592							
	8450.00	1325	2058	2581	2904	3168	3386
593							

594	8500.00	1329	2064	2589	2912	3178	3396
595	8550.00	1333	2070	2597	2921	3187	3406
596	8600.00	1337	2076	2604	2929	3196	3415
597	8650.00	1341	2082	2612	2938	3205	3425
598	8700.00	1345	2088	2619	2946	3215	3435
599	8750.00	1349	2094	2627	2955	3224	3445
600	8800.00	1352	2100	2634	2963	3233	3454
601	8850.00	1356	2106	2642	2972	3242	3464
602	8900.00	1360	2111	2649	2981	3252	3474
603	8950.00	1364	2117	2657	2989	3261	3484
604	9000.00	1368	2123	2664	2998	3270	3493
605	9050.00	1372	2129	2672	3006	3279	3503
606	9100.00	1376	2135	2680	3015	3289	3513
607	9150.00	1380	2141	2687	3023	3298	3523
	9200.00	1384	2147	2695	3032	3307	3532

608							
	9250.00	1388	2153	2702	3040	3316	3542
609							
	9300.00	1391	2159	2710	3049	3326	3552
610							
	9350.00	1395	2165	2717	3058	3335	3562
611							
	9400.00	1399	2171	2725	3066	3344	3571
612							
	9450.00	1403	2177	2732	3075	3353	3581
613							
	9500.00	1407	2183	2740	3083	3363	3591
614							
	9550.00	1411	2189	2748	3092	3372	3601
615							
	9600.00	1415	2195	2755	3100	3381	3610
616							
	9650.00	1419	2201	2763	3109	3390	3620
617							
	9700.00	1422	2206	2767	3115	3396	3628
618							
	9750.00	1425	2210	2772	3121	3402	3634
619							
	9800.00	1427	2213	2776	3126	3408	3641
620							
	9850.00	1430	2217	2781	3132	3414	3647
621							
	9900.00	1432	2221	2786	3137	3420	3653
622							

9950.00	1435	2225	2791	3143	3426	3659
10000.00	1437	2228	2795	3148	3432	3666

(7) LOW-INCOME PARENTS.--For combined monthly available income less than the amount set out in the schedule provided in subsection (6) ~~on the above schedules~~, the parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased orders should the parent's income increase in the future.

(8) HIGH-INCOME PARENTS.--For combined monthly available income greater than the amount set out in the schedule provided in subsection (6) ~~above schedules~~, the obligation shall be the minimum amount of support provided by the guidelines schedule plus the following percentages multiplied by the amount of income over $10,000:

Child or Children					
One	Two	Three	Four	Five	Six
5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

(9) EXPENSES TO BE ADDED.--Some expenditures related to raising children represent either large expenses or expenses that may vary greatly from child to child and, for that reason, are not built into the child support guidelines schedule. However, these types of expenditures are typically incurred by most

children involved in child support proceedings and shall be considered expenditures that are to be added to the basic child support obligation, as follows:

(a) ~~(7)~~ Child care costs incurred on behalf of the children due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be ~~reduced by 25 percent and then shall be~~ added to the basic obligation. After the ~~adjusted~~ child care costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for child care costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children. Child care costs shall not exceed the level required to provide quality care from a licensed source for the children.

(b) ~~(8)~~ Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), and any noncovered medical, dental, and prescription medication expenses of the child, shall be added to the basic obligation unless these expenses have been ordered to be separately paid on a percentage basis. After the health insurance costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for health-related costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children.

~~(9) Each parent's percentage share of the child support need shall be determined by dividing each parent's net income by the combined net income.~~

~~(10) Each parent's actual dollar share of the child support need shall be determined by multiplying the minimum child support need by each parent's percentage share.~~

(10)~~(11)(a)~~ FACTORS TO BE CONSIDERED FOR VARIATION.--The court may adjust the minimum child support award, or either or both parents' share of the minimum child support award, based upon the following considerations:

(a)~~1.~~ Extraordinary medical, psychological, educational, or dental expenses.

(b)~~2.~~ Independent income of the child, not to include moneys received by a child from supplemental security income.

(c)~~3.~~ The payment of support for a parent which regularly has been paid and for which there is a demonstrated need.

(d)~~4.~~ Seasonal variations in one or both parents' incomes or expenses.

(e)~~5.~~ The age of the child, taking into account the greater needs of older children.

(f)~~6.~~ Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the amount proposed in the guidelines schedule.

(g)~~7.~~ Total available assets of the obligee, obligor, and the child.

(h)~~8.~~ The impact of the Internal Revenue Service dependency exemption and waiver of that exemption and the impact of any federal child care tax credit. The court may order the primary residential parent to execute a waiver of the Internal Revenue

Service dependency exemption if the noncustodial parent is current in support payments.

(i) ~~9.~~ When application of the child support guidelines requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

(j) ~~10.~~ The particular shared parental arrangement~~, such as where the child spends a significant amount of time, but less than 40 percent of the overnights, with the noncustodial parent, thereby reducing the financial expenditures incurred by the primary residential parent; or the refusal of the noncustodial parent to become involved in the activities of the child~~.

(k) ~~11.~~ Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt which the parties jointly incurred during the marriage.

~~(b) Whenever a particular shared parental arrangement provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:~~

~~1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to the noncustodial parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.~~

~~2. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to the custodial~~

~~parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.~~

~~3. Calculate the percentage of overnight stays the child spends with each parent.~~

~~4. Multiply the noncustodial parent's support obligation as calculated in subparagraph 1. by the percentage of the custodial parent's overnight stays with the child as calculated in subparagraph 3.~~

~~5. Multiply the custodial parent's support obligation as calculated in subparagraph 2. by the percentage of the noncustodial parent's overnight stays with the child as calculated in subparagraph 3.~~

~~6. The difference between the amounts calculated in subparagraphs 4. and 5. shall be the monetary transfer necessary between the custodial and noncustodial parents for the care of the child, subject to an adjustment for day care and health insurance expenses.~~

~~7. Pursuant to subsections (7) and (8), calculate the net amounts owed by the custodial and noncustodial parents for the expenses incurred for day care and health insurance coverage for the child. Day care shall be calculated without regard to the 25 percent reduction applied by subsection (7).~~

~~8. Adjust the support obligation owed by the custodial or noncustodial parent pursuant to subparagraph 6. by crediting or debiting the amount calculated in subparagraph 7. This amount represents the child support which must be exchanged between the custodial and noncustodial parents.~~

~~9. The court may deviate from the child support amount calculated pursuant to subparagraph 8. based upon the~~

~~considerations set forth in paragraph (a), as well as the custodial parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that the noncustodial parent will actually exercise the visitation granted by the court, and whether all of the children are exercising the same shared parental arrangement.~~

~~10. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that the noncustodial parent exercises visitation at least 40 percent of the overnights of the year.~~

(11) SHARED PARENTING AND SPLIT PARENTING ARRANGEMENTS.--

(a) In an intact family, the children reside in one household with both parents and no visitation is needed. The minimum child support amounts in the child support guidelines schedule provided in subsection (6) represent spending on children by intact families. Therefore, the child support amounts in the guidelines schedule are appropriate only if the child resides in the custodial parent's household 100 percent of the time. In shared parenting situations, each parent incurs expenses for the child while the child is with that parent. To accommodate shared parenting situations, each parent's income share of the minimum child support award may be adjusted based on expenses assumed to be duplicated or shifted and the amount of time spent with the child. Although these guidelines are designed to accommodate shared parenting arrangements when appropriate, shared parenting adjustments or awards are not presumptive but are subject to the discretion of the court in accordance with the factors listed in subsection (10).

(b) Unless the parties otherwise agree, the final child support order shall not be based on a calculated shared parenting award if:

1. The monthly net income of the custodial parent plus the shared parenting child support award is less than two times the then-current poverty guidelines prescribed by the United States Department of Health and Human Services for the size of the household; or

2. In any case, the court finds that the net income of the custodial parent remaining after the calculation of the shared parenting award is not sufficient to maintain the household for the child.

(c) A shared parenting calculation shall be determined according to the following formula:

1. The child support payment to be made equals (the basic support obligation) multiplied by (1 plus Parent A's percentage of the shared parenting time) multiplied by [(Parent A's share of the combined monthly net income) minus (Parent A's percentage of the shared parenting time)].

2. If the two parents do not have an equal amount of parenting time, Parent A is the parent with the smaller percentage of time.

3. If the two parents have an equal amount of parenting time, Parent A is the parent with the larger income.

(d) ~~(c)~~ A noncustodial parent's failure to regularly exercise court-ordered or agreed visitation not caused by the custodial parent which resulted in the adjustment of the amount of child support as provided in subsection (12) ~~pursuant to subparagraph (a)10. or paragraph (b)~~ shall be deemed a substantial change of

circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph shall be retroactive to the date the noncustodial parent first failed to regularly exercise court-ordered or agreed visitation.

(e) A split parenting arrangement exists when there is more than one child in common and each parent provides primary residential care for at least one of the children. In cases involving split parenting arrangements, the court shall calculate and issue a separate child support order for each parent based on the number of children in that parent's custody, and the difference between the two orders is the amount to be paid by the parent with the higher child support order amount.

(12) DETERMINATION OF CHILD SUPPORT ORDER AMOUNT.--

(a) Calculations shall be made to determine the amount of child support contained in the support order, as follows:

1. Gross income shall be determined on a monthly basis for each parent as provided in subsection (4).

2. Net income for each parent shall be determined by subtracting allowable deductions from gross income as provided in subsection (5).

3. Net income for each parent shall be added together for a combined net income.

4. The combined net income shall be applied to the child support guidelines schedule as provided in subsection (6) to determine the minimum child support amount.

5. Each parent's percentage share of the minimum child support amount shall be determined by dividing each parent's net income by the combined net income.

6. Each parent's actual dollar share of the minimum child support amount shall be determined by multiplying the minimum child support amount by each parent's percentage share.

7. Any adjustment as a result of a particular shared parenting arrangement as provided in subsection (11) shall be factored in.

8. Any child care costs related to employment or education calculated pursuant to subsection (9) shall be added to the basic child support obligation.

9. Any costs related to health insurance premiums for the child determined pursuant to subsection (9) shall be added to the basic child support obligation.

10. The amount of the child support order is determined by adding the basic child support obligation, any offset for a particular parenting time arrangement, net child care costs related to employment or education, and health insurance costs for the child.

(b) Calculations shall be rounded to the nearest one-tenth of a percent for percentages and to the nearest dollar in all instances. When the parents' combined net income falls halfway or more than halfway between the two income figures on the schedule, the higher figure shall be used. When the parents' combined net income falls less than halfway between two income figures, the lower figure shall be used.

(13) MODIFICATION OF EXISTING ORDERS.--

(a) The guidelines schedule provided in subsection (6) may provide the basis for proving a substantial change in circumstances upon which a modification of an existing order may be granted. However, the difference between the existing monthly

obligation and the amount provided for under the guidelines schedule shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines schedule provides a substantial change in circumstances.

(b) For each child support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under this section, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(14) FINANCIAL AFFIDAVIT.--Every petition for child support or for modification of child support shall be accompanied by an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The affidavit shall be served at the same time that the petition is served. The respondent, whether or not a stipulation is entered, shall make an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The respondent shall include his or her affidavit with the answer to the petition or as soon thereafter as is practicable, but in any case at least 72 hours prior to any hearing on the finances of either party.

(15) ~~(12)~~ EXISTENCE OF SUBSEQUENT CHILDREN.--

(a) A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. If such subsequent children exist, the court, when considering an upward modification of an existing award, may disregard the income from secondary employment

obtained in addition to the parent's primary employment if the court determines that the employment was obtained primarily to support the subsequent children.

(b) Except as provided in paragraph (a), the existence of such subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines schedule. The parent with a support obligation for subsequent children may raise the existence of such subsequent children as a justification for deviation from the guidelines schedule. However, if the existence of such subsequent children is raised, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not there is a basis for deviation from the guideline amount.

(c) The issue of subsequent children under paragraph (a) or paragraph (b) may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

~~(13) If the recurring income is not sufficient to meet the needs of the child, the court may order child support to be paid from nonrecurring income or assets.~~

(16) ~~(15)~~ COOPERATION RELATED TO PUBLIC ASSISTANCE.--For purposes of establishing an obligation for support in accordance with this section, if a person who is receiving public assistance is found to be noncooperative as defined in s. 409.2572, the IV-D agency is authorized to submit to the court an affidavit attesting to the income of the custodial parent based upon information available to the IV-D agency.

(17) ~~(16)~~ REVIEW OF GUIDELINES.--The child support guidelines shall be reviewed and revised, if necessary, at least once every 4 years by a committee to be appointed by the Chief Justice of the Supreme Court to ensure that the support amounts are appropriate for child support awards. The Supreme Court shall approve the child support guidelines upon revision by the committee for use in this state and shall publish the guidelines through per curiam order of the court ~~The Legislature shall review the guidelines established in this section at least every 4 years beginning in 1997~~.

(18) ~~(17)~~ RETROACTIVE CHILD SUPPORT.--In an initial determination of child support, whether in a paternity action, dissolution of marriage action, or petition for support during the marriage, the court has discretion to award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition. In determining the retroactive award in such cases, the court shall consider the following:

(a) The court shall apply the guidelines schedule in effect at the time of the hearing subject to the obligor's demonstration of his or her actual income, as defined by subsection (4) ~~(2)~~, during the retroactive period. Failure of the obligor to so demonstrate shall result in the court using the obligor's income at the time of the hearing in computing child support for the retroactive period.

(b) All actual payments made by the noncustodial parent to the custodial parent or the child or third parties for the benefit of the child throughout the proposed retroactive period.

(c) The court should consider an installment payment plan for the payment of retroactive child support.

Section 4. Subsection (10) of section 409.2564, Florida Statutes, is amended to read:

409.2564 Actions for support.--

(10) For the purposes of denial, revocation, or limitation of an individual's United States passport, consistent with 42 U.S.C. s. 652(k)(1), the Title IV-D agency shall have procedures to certify to the Secretary of the United States Department of Health and Human Services, in the format and accompanied by such supporting documentation as the secretary may require, a determination that an individual owes arrearages of support in an amount exceeding $2,500 ~~$5,000~~. Said procedures shall provide that the individual be given notice of the determination and of the consequence thereof and that the individual shall be given an opportunity to contest the accuracy of the determination.

Section 5. Effective July 1, 2006, section 409.25641, Florida Statutes, is amended to read:

409.25641 Procedures for processing automated administrative enforcement requests.--

(1) The department ~~Title IV-D agency~~ shall use automated administrative enforcement, as defined in Title IV-D of the Social Security Act, in response to a request from another state to enforce a support order and shall promptly report the results of enforcement action to the requesting state.

(2) This request:

(a) May be transmitted from the other state by electronic or other means.~~,~~

(b) Shall contain sufficient identifying information to allow comparison with the databases within the state which are available to the department. ~~Title IV-D agency; and~~

(c) Shall constitute a certification by the requesting state:

1. Of the amount of arrearage accrued under the order; and

2. That the requesting state has complied with all procedural due process requirements applicable to the case.

(3) If assistance is provided by the department ~~Title IV-D agency~~ to another state as prescribed above, the department may not ~~neither state shall~~ consider the case to be transferred from the caseload of the other state to the caseload of the department, but the department may establish a corresponding case based on the other state's request for assistance ~~Title IV-D agency~~.

(4) The department ~~Title IV-D agency~~ shall maintain a record of:

(a) The number of requests received;

(b) The number of cases for which the department ~~Title IV-D agency~~ collected support in response to such a request; and

(c) The amount of such collected support.

(5) The department shall have authority to adopt rules to implement this section.

Section 6. Paragraph (g) of subsection (1) and paragraph (a) of subsection (5) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.--

(1) DEFINITIONS.--As used in this section, the term:

(g) "Retroactive support" means a child support obligation established pursuant to s. 61.30(18)~~(17)~~.

Other terms used in this section have the meanings ascribed in ss. 61.046 and 409.2554.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.--

(a) After serving notice upon the noncustodial parent in accordance with subsection (4), the department shall calculate the noncustodial parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline amounts under s. 61.30. If the custodial parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit for the custodial parent pursuant to s. 61.30(16)~~(15)~~. If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

Section 7. Paragraph (b) of subsection (4) of section 742.031, Florida Statutes, is amended to read:

742.031 Hearings; court orders for support, hospital expenses, and attorney's fee.--

(4)

(b) The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order; to the date of filing of the initial petition for dissolution of marriage, petition for support, petition determining paternity, or supplemental petition for modification; or to a date prescribed in s. 61.14(1)(a) or s. 61.30(11)(d)~~(e)~~ or (18)~~(17)~~, as applicable.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FFF 06-05 Forensic Treatment and Training
SPONSOR(S): Future of Florida's Families Committee
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2010, HB 1503

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee		Davis	Collins
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of persons who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for 'forensic client' to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities;
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and
- Clarifies distinction between ch. 916, F.S., forensic procedures for involuntary commitment and ch. 393, F.S., procedures for **non**-forensic involuntary commitment (the source of much court confusion).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 916.105, 916.106, 916.107, 916.1075, 916.1081, 916.1085, 916.1091, 916.1093, 916.111, 916.115, 916.12, 916.13, 916.145, 916.15, 916.16, 916.17, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 921.137, 985.223, 287.057, 408.036, 943.0585, 942.059.

According to the Agency for Persons with Disabilities, there is no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government: The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 916, F.S., the "Forensic Client Services Act," applies to persons charged with a felony and found to be incompetent to proceed due to mental illness, mental retardation, or autism or who have been acquitted of felonies by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the department. Chapter 916, F.S., is divided into three parts: Part I, General Provisions; Part II, Forensic Services for Persons Who are Mentally Ill; and, Part III, Forensic Services for Persons Who are Retarded or Autistic. The Florida Rules of Criminal Procedure (FRCP Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed, hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Part I provides legislative intent for DCF to "establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants" committed under the provisions of the chapter. This part provides definitions for terminology used in the entire chapter, including definitions of "autism," "forensic client," "mental illness," and "retardation." Part I also includes the rights of forensic clients, which include the right to;

- Individual dignity,
- Treatment,
- Express and informed consent,
- Quality treatment, communication,
- Abuse reporting, and visits,
- To have personal effects and clothing,
- To vote if otherwise eligible,
- Confidentiality of the clinical record, and
- Habeas corpus.

This part also provides prohibitions and penalties for sexual misconduct by an employee with a forensic client, penalties for escape from a forensic program, and penalties for the introduction or removal of certain articles into a forensic facility. It provides general rulemaking authority for the department.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity.

This part also directs DCF to provide either directly or through a contract with accredited institutions standardized criteria and procedures to be used in evaluations and to develop clinical protocol and procedures consistent with the FRCP. In addition, DCF must develop a training plan for community mental health professionals who perform forensic evaluations, provide training for professionals doing evaluations and providing reports to the court and develop a

system to evaluate the program's success. Each year DCF is required to provide the court with a list of mental health professionals approved as experts.

Part II authorizes the court to appoint no more than three nor fewer than two experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. The court is required to authorize reasonable fees for expert evaluations and testimony.

Pursuant to this part, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him or her, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The examining expert must include in the report to the court any other information deemed relevant. If the expert finds the defendant incompetent to proceed, they must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.

A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. "Psychotropic medication" is defined for the purposes of ch. 916, F.S., as "any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs."

Part II of ch. 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.8 Persons committed under Part I of ch. 916, F.S., are committed to the custody of DCF and are usually treated at one of the three forensic state mental health treatment facilities at Florida State

Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami.

The court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court.

Part III of ch. 916, F.S., relates to forensic services for persons with retardation or autism and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental retardation or autism. Similar to the provisions of Part I, this section directs that the department must provide the courts annually with a list of professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic, but one of the experts appointed by the court must be the "developmental services program of the department," and the department is directed to "select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant."

The court must find by clear and convincing evidence that:

- The defendant is retarded or autistic,
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm,
- There is no less restrictive treatment available, and
- There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and he or she will regain competency to proceed in the reasonably foreseeable future.

A defendant who is found to be incompetent to proceed and meets the above criteria is committed to the department. No later than six months after admission, at the end of any period of extended commitment, or at any time the administrator determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator must file a report with the court.

If a defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed two years, the charges against him or her are to be dropped. The only exception is if the court specifies in its order the reasons for expecting that the defendant will become competent to proceed within the foreseeable future and specifies the time within which that is expected to occur. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.13 The individual may then apply for services from the agency.

If the defendant requires involuntary residential services under s. 393.11, F.S., and there is a substantial likelihood that he or she will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings are inappropriate, then the defendant's placement in a secure facility or program may be continued. An individual involuntarily placed under this provision must have an annual review of his or her status by the court at a hearing. The annual review and hearing are to determine whether the individual continues to meet the criteria for involuntary residential services and, if so, if placement in a secure facility is still required

because the court finds that the individual is likely to physically injure others. However, in no circumstance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.

Forensic programs for persons with developmental disabilities are the Mentally Retarded Defendant Programs, which are located at Sunland in Marianna, Florida State Hospital in Chattahoochee, and Taccachale in Gainesville.

The Agency for Persons with Disabilities (APD) was created effective October 1, 2004. The agency is housed within the Department of Children and Families (DCF) for administrative purposes only. It is not subject to the control, supervision or direction of DCF, and the director of APD is appointed by the Governor. The agency's mission is to assist people who have developmental disabilities and their families. The agency also provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Although the agency's Central Office is located in Tallahassee, supports and services for people with developmental disabilities are provided through district offices throughout the state.

Developmental disabilities include mental retardation, autism, spina bifida, cerebral palsy, and Prader-Willi syndrome. The bill proposes to continue the conforming changes to statutes begun in 2004 to conform to the establishment of the new agency, plus make some needed updating and clarifications; as well as several substantive changes that will allow the agency to better serve the needs of service recipients and the public interest.

As part of those transitions, institutions housing clients with developmental disabilities were also transferred to APD. This included institutions housing forensic clients diagnosed with mental retardation or autism that had been charged with a felony offense but found incompetent to proceed to trial. Statutory provisions relating to forensic clients are found in chapter 916, F.S. However, the current chapter, which is divided into 3 parts, has not yet been modified to recognize the distinction between the DCF with respect to forensic clients with mental illness, and the APD, which is responsible for forensic clients with mental retardation or autism.

The DCF is no longer responsible for the treatment and training of defendants who have solely mental retardation or autism. The delay in modifying Chapter 916, F.S., to clearly distinguish the department's responsibility from the responsibilities of the new agency has caused confusion among the courts. Individuals with mental retardation or autism, at times, continue to be committed to the department and commitment packets are being sent to the Forensic Admissions Office within mental health. Because individuals can have both mental retardation and mental illness, it becomes very difficult at times to determine whether the court intended to commit the individual due to mental illness or mental retardation. This uncertainty requires staff time to obtain clarification from the court and may result in the court's issuing new orders and/or requiring new evaluations. The individual may have to move from the mental health waiting list to the mental retardation waiting list, which ultimately delays the individual's admission time.

Use of Restraint and Seclusion

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Of those deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, AHCA, APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, "Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to

protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a rehabilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort."

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual's death is a result of restraint and seclusion. However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

According to DCF, clearly distinguishing that the treatment and training of defendants with mental retardation or autism is the responsibility of the Agency for Persons with Disabilities will minimize the courts' confusion, lead to fewer inappropriate commitments to the department, and help to ensure that defendants with mental retardation or autism are placed on the appropriate waiting list so that admission can occur without unnecessary delays.

Mental Health Treatment Facilities

The purpose of mental health treatment facilities is to stabilize adults with mental illnesses so they can return to the community. Florida's mental health institutions, also known as mental health treatment facilities, are part of the continuum of care for the most seriously mentally ill residents of the state. In Fiscal Year 2004-05, the program served 3,950 adults in two population categories.

The "civil population category" includes adults with a serious mental illness who meet voluntary or involuntary admission criteria (are a danger to themselves or others) and for whom less restrictive treatment settings are not available or appropriate.

The "forensic population category" includes adults with a serious mental illness who are either charged with a criminal offense and found not guilty of a crime by reason of insanity or found incompetent to proceed through any phase of the judicial process.

Institutional mental health services are provided at five state mental health treatment facilities, which include two civil facilities, two forensic facilities, and one facility with both civil and forensic units.

"Civil facilities" serve the general population and provide evaluation, mental health treatment, rehabilitation and support to facilitate clients' successful return to the community. Each hospital serves a designated geographic catchment area.

"Forensic facilities" serve adults charged with a felony criminal offense (and juveniles adjudicated as adults) and provide mental health treatment and competency restoration services in a secure residential setting. The facilities serve individuals who are found incompetent to proceed to trial and individuals who are found not guilty of their crime due to reason of insanity. Forensic facilities serve individuals from all geographic areas of the state.

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness and are involved with the criminal justice system. The goal is to provide assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity.

In addition to the general psychiatric treatment approaches and milieu, specialized services include:

- Psychosocial rehabilitation

- Education
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention
- Sexually transmitted disease education and prevention
- Substance abuse awareness and prevention
- Vocational training
- Occupational therapies
- Full range of medical and dental services

Services include comprehensive assessment, evaluation, and treatment of psychiatric disorders for individuals involved with the criminal court system. Evaluations for competency to proceed, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community are provided. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers.

Forensic services are provided to adults over the age of 18 and juveniles adjudicated as adults. Diagnostic categories include all major DSMIV disorder classifications (primarily schizophrenia and mood disorders). Secondary diagnoses, such as substance abuse and personality disorders, are also present for a significant number of people.

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. The facilities admit over 1,000 individuals into the state treatment facilities on a yearly basis.

Community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.

Section 916.145, F.S., states, "The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed five years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future."

An acquittal of not guilty by reason of insanity (NGBRI) is an adjudication by the court. The individual remains NGBRI of the charge(s) indefinitely and cannot be retried on the same charge(s). However, the court may maintain jurisdiction and may commit the individual to the DCF for inpatient treatment or order treatment and supervision in the community under the terms of a conditional release.

If committed to the department for inpatient treatment, the treating facility must file a report with the court within six months of the individual's admission, prior to the end of any extended period of treatment or at any time the administrator or designee determines that the individual no longer meets the criteria for involuntary commitment. Individuals placed on conditional release may remain under court supervision until such time that the court determines they no longer require court supervision.

In Fiscal Year 2003-04, 69% of the individuals committed under the civil statute experienced symptom relief, and 53% of the forensic individuals who were Not Guilty by Reason of Insanity experienced symptom relief. In future years, the performance measurement system will shift from measuring symptom relief to measuring improvement in functioning. In Fiscal Year 2005-06, the DCF goal is to improve the level of functioning for 73% of the civil population and 63% of the forensic population.

Effect:

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for "forensic client" to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities.
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients;
- Amends statute to clarify distinction between ch. 916 forensic procedures for involuntary commitment and ch. 393 procedures for **non**-forensic involuntary commitment (the source of much court confusion).

The bill updates, clarifies, and adds reference to APD; adds language relating to the use of restraints and seclusion; revises the definition of "Forensic Clients" and their right to treatment; revises a forensic client's right to express and informed consent during emergency situations to include a review of the need for treatment review every 48 hours; adds quality of treatment language pertaining to a client's right to be free from unnecessary use of restraint and seclusion (restraints and seclusion should only be used in situations in which the client or others are at risk); and specifies that the release of confidential information comply with state and federal law.
Provisions related to the appointment of experts are updated. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant;

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
(c) Understand the adversarial nature of the legal process;
(d) Disclose to counsel facts pertinent to the proceedings at issue;
(e) Manifest appropriate courtroom behavior; and
(f) Testify relevantly; and
(g) Any other factor deemed relevant by the experts.

C. SECTION DIRECTORY:

Section 1. Amends s. 916.105, F.S., relating to legislative intent to reduce the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Amends s. 916.106, F.S., providing and revising definitions.

Section 3. Amends s. 916.107, F.S., relating to the rights of forensic clients.

Section 4. Amends s. 916.1075, F.S., relating to sexual misconduct to substitute the term "covered person" for "employee" and require APD to directly report misconduct rather than reporting through the agency's inspector general.

Section 5. Amends s. 916.1081, F.S., relating to penalties for escaping from a forensic facility to distinguish from forensic clients in the correctional system.

Section 6. Amends s. 916.1085. F.S., providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities.

Section 7. Amends s. 916.1091, F.S., relating to security personnel to add APD.

Section 8. Amends s. 916.1093, F.S., relating to administration and rules to add APD, and to specify the content of rules relating to restraint and seclusion.

Section 9. Amends s. 916.111, F.S., updating provisions relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., updating provisions relating to appointment of experts. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

Section 11. Amends s. 916.12, F.S., adding provisions relating to competency to proceed.

Section 12. Amends s. 916.13, F.S., relating to involuntary commitment to alter the burden of commitment.

Section 13. Amends s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent.

Section 14. Amends s. 916.15, F.S., relating to insanity to clarify that incompetence is determined according to Rule 3.217 of the Florida Rules of Criminal Procedure.

Section 15. Amends s. 916.16, F.S., relating to jurisdiction of courts over defendants involuntarily committed due to a determination of incompetence.

Section 16. Amends s. 916.17, F.S., relating to conditional release.

Section 17. Amends s. 916.301, F.S., relating to the appointment of experts and to update and clarify the persons to be selected as experts.

Section 18. Amends s. 916.3012, F.S., clarifying provisions governing the determination of a defendant's mental competence to proceed.

Section 19. Amends s. 916.302, F.S., relating to involuntary commitment and to require the submission of an evaluation by DCF and APD for dually diagnosed defendants.

Section 20. Amends s. 916.3025, F.S., relating to jurisdiction of committing court and to permit the court to transfer jurisdiction to a court in the circuit where the defendant resides.

Section 21. Amends s. 916.303, F.S., relating to determination of incompetency to clarify the difference between the grounds for involuntary commitments under ch. 393, F.S., and the requirement for continued secure placement under ch. 916, F.S.

Section 22. Amends s. 916.304, F.S., relating to conditional release to update and clarify the difference between involuntary placements and forensic commitments.

Section 23. Amends s. 921.137, F.S., relating to the death sentence for retarded inmates and to update the reference from DCF to APD.

Section 24. Amends s. 985.223, updating the provisions relating to juvenile delinquency cases.

Section 25. Amends. s. 287.057, F.S., to update cross-reference.

Section 26. Amends s. 408.036, F.S., to update cross-reference.

Section 27. Amends s. 943.0585, F.S., to update cross-reference.

Section 28. Amends s. 943.059, F.S., to update cross-reference.

Section 29. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Agency for Persons with Disabilities and the Department and Children and Family Services, there is no fiscal impact to this bill.

The Legislature appropriated $289 million to the state mental health institutions for Fiscal Year 2005-06. Approximately 65% of the funding is used for personnel. For Fiscal Year 2005-06, the Legislature has authorized 4,270.5 staff positions for the institutions. The staff provide mental health, medical, security, administrative, housekeeping and maintenance services. The program's annual appropriation also includes funds for the department to contract with a private provider for the operation and management of South Florida Evaluation and Treatment Center.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Persons with Disabilities to adopt rules under s. 916.1093, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to forensic treatment and training; amending s. 916.105, F.S.; revising legislative intent with respect to the treatment or training of defendants who have mental illness, mental retardation, or autism and are committed to the Agency for Persons with Disabilities; providing intent with respect to the use of restraint and seclusion; amending s. 916.106, F.S.; providing and revising definitions; amending s. 916.107, F.S., relating to the rights of forensic clients; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; revising provisions governing the involuntary treatment of clients; requiring the coordination of services between the department, the agency, and the Department of Corrections; amending s. 916.1075, F.S.; revising certain prohibitions on sexual misconduct involving covered persons of the Department of Children and Family Services or the Agency for Persons with Disabilities; defining the term "covered person"; requiring that notice of sexual misconduct be provided to the inspector general of the agency or department; amending s. 916.1081, F.S.; providing that an escape or an attempt to escape from a civil or forensic facility constitutes a second-degree felony; amending s. 916.1085, F.S.; providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with

Disabilities; deleting a cross-reference; amending s. 916.1091, F.S.; authorizing the use of chemical weapons by agency personnel; amending s. 916.1093, F.S.; authorizing the agency to enter into contracts and adopt rules; requiring department and agency rules to address the use of restraint and seclusion; providing requirements for such rules; amending s. 916.111, F.S.; revising provisions governing the training of mental health experts; amending s. 916.115, F.S.; requiring that the court appoint experts to determine the mental condition of a criminal defendant; requiring that the Department of Children and Family Services annually provide the courts with a list of certain mental health professionals; amending s. 916.12, F.S.; revising provisions governing the evaluation of a defendant's competence to proceed; amending s. 916.13, F.S.; revising conditions under which a defendant may be involuntarily committed for treatment; amending s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent; conforming provisions to changes made by the act; amending s. 916.15, F.S.; clarifying that the determination of not guilty by reason of insanity is made under a specified Florida Rule of Criminal Procedure; amending s. 916.16, F.S.; providing for the continuing jurisdiction of the court over a defendant involuntarily committed due to mental illness; amending s. 916.17, F.S.; clarifying circumstances under which the court may order the conditional release of a defendant; amending s. 916.301, F.S.; requiring that certain evaluations be conducted by certain qualified

experts; requiring that the Agency for Persons with Disabilities provide the court with a list of certain available retardation and autism professionals; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; amending s. 916.3012, F.S.; clarifying provisions governing the determination of a defendant's mental competence to proceed; amending s. 916.302, F.S., relating to the involuntary commitment of a defendant; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; requiring that the department and agency submit an evaluation to the court before the transfer of a defendant from one civil or forensic facility to another; amending s. 916.3025, F.S.; clarifying that the committing court retains jurisdiction over a defendant placed on conditional release; providing for the transfer of continuing jurisdiction to another court where the defendant resides; amending s. 916.303, F.S.; clarifying provisions governing the dismissal of charges against a defendant found to be incompetent to proceed due to retardation or autism; amending s. 916.304, F.S.; providing for the conditional release of a defendant to a civil facility; amending ss. 921.137 and 985.223, F.S., relating to provisions governing the imposition of the death sentence upon a defendant with mental retardation and the determination of incompetency in cases involving

juvenile delinquency; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending ss. 287.057, 408.036, 943.0585, and 943.059, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.--

(1) It is the intent of the Legislature that the Department of Children and Family Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been ~~are~~ charged with a felony and who have been found to be incompetent to proceed due to their mental illness, mental retardation, or autism, or who have been acquitted of a felony ~~felonies~~ by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. Such ~~The separate, secure~~ facilities shall be sufficient to accommodate the number of defendants committed under the conditions noted above.~~,~~ Except for those defendants found by the department or agency to be appropriate for treatment or training in a civil ~~treatment~~ facility or program pursuant to subsection (3), forensic~~. Such~~

~~secure~~ facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities.

(2) It is ~~further~~ the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, mental retardation, or autism ~~are found to be mentally ill, retarded, or autistic~~ and are involuntarily committed to the department or agency, and who are still under the jurisdiction of the committing court, be provided in ~~such~~ a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who have mental illness, mental retardation, or autism ~~are mentally ill, retarded, or autistic~~ be provided in community settings, in community residential facilities, or in civil~~, nonforensic~~ facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

(4) It is the intent of the Legislature to minimize and achieve an ongoing reduction in the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.--For the purposes of this chapter, the term:

(1) "Agency" means the Agency for Persons with Disabilities. The agency is responsible for training forensic clients who are developmentally disabled due to mental retardation or autism and have been determined incompetent to proceed.

(2) ~~(1)~~ "Autism" has the same meaning as in s. 393.063. ~~means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders, with the age of onset of autism occurring during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.~~

(3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as "mace."

(4) ~~(3)~~ "Civil facility" means:

(a) A mental health facility established within the department or by contract with the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility; or~~.~~

(b) An intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, designated by the agency to serve those defendants who do not require the security provided in a forensic facility.

(5) ~~(4)~~ "Court" means the circuit court.

(6) "Defendant" means an adult, or a juvenile who is prosecuted as an adult, who has been arraigned and charged with a felony offense under the laws of this state.

(7) ~~(5)~~ "Department" means the Department of Children and Family Services. The department is responsible for the treatment of forensic clients who have been determined incompetent to proceed due to mental illness or who have been acquitted of a felony by reason of insanity.

(8) ~~(6)~~ "Express and informed consent" or "consent" means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.

(9) ~~(7)~~ "Forensic client" or "client" means any defendant who has been ~~is mentally ill, retarded, or autistic and who is~~ committed to the department or agency pursuant to s. 916.13, s. 916.15, or s. 916.302. ~~this chapter and:~~

~~(a) Who has been determined to need treatment for a mental illness or training for retardation or autism;~~

~~(b) Who has been found incompetent to proceed on a felony offense or has been acquitted of a felony offense by reason of insanity;~~

~~(c) Who has been determined by the department to:~~

~~1. Be dangerous to himself or herself or others; or~~

~~2. Present a clear and present potential to escape; and~~

~~(d) Who is an adult or a juvenile prosecuted as an adult.~~

(10) ~~(8)~~ "Forensic facility" means a separate and secure

facility established within the department or agency to serve forensic clients. A ~~Such~~ separate and secure facility means a ~~facilities shall be~~ security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents ~~buildings located on grounds distinct in location from other facilities for persons who are mentally ill~~. ~~The Florida State Hospital shall not be required to maintain separate facilities for mentally ill, retarded, or autistic defendants who are found incompetent to proceed or who are acquitted of a criminal offense by reason of insanity.~~

(11) ~~(9)~~ "Incompetent to proceed" means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant's failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

(12) ~~(10)~~ "Institutional security personnel" means the staff of forensic facilities ~~members~~ who meet or exceed the requirements of s. 943.13 and who are responsible for providing security, protecting ~~for protection of~~ clients and personnel, enforcing ~~for the enforcement of~~ rules, preventing and investigating ~~for prevention and investigation of~~ unauthorized activities, and ~~for~~ safeguarding the interests of citizens in the surrounding communities.

(13) ~~(11)~~ "Mental illness" means an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental retardation or autism ~~who are solely retarded or autistic,~~ and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

(14) "Restraint" means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to an individual's body so that he or she cannot easily remove the restraint and that restricts freedom of movement or normal access to his or her body.

(b) A drug used as a restraint is a medication used to control a person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to

protect a person from falling out of bed.

(15) ~~(12)~~ "Retardation" has the same meaning as in s. 393.063. ~~means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.~~

(16) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms, the confinement in state mental health treatment facilities to a bedroom or area during normal hours of sleep when there is not an active order for seclusion, or during an emergency such as a riot or hostage situation when clients may be temporarily placed in their rooms for their own safety.

(17) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes of part III,~~ means a person whose minimum qualifications include a

bachelor's degree and at least 2 years of social work, clinical practice, special education, habilitation, or equivalent experience working directly with persons with retardation, autism, or other developmental disabilities.

Section 3. Section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, retardation, or autism ~~Defendants who are mentally ill, retarded, or autistic~~ and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client ~~defendant~~ who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following ~~from~~ the date the department or agency receives a completed copy of the court commitment order containing all ~~the~~ documentation required by the applicable ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For a forensic client ~~defendant who is mentally ill, retarded, or autistic,~~ who is held in a jail awaiting admission to a facility of the department or agency~~, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity~~, evaluation and treatment or training may ~~shall~~ be provided in the jail by the local community mental health provider ~~public receiving facility~~ for mental health services, ~~or~~ by the developmental disabilities ~~services~~ program

for persons with retardation or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility ~~the custody of the department~~.

(b) Forensic clients ~~Mentally ill, retarded, or autistic defendants who are committed to the department pursuant to this chapter and~~ who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

(2) RIGHT TO TREATMENT.--

(a) The policy of the state is that neither the department nor the agency shall ~~not~~ deny treatment or training to any client and that no services shall be delayed ~~at a facility~~ because the forensic client is indigent pursuant to s. 27.52 and presently unable to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing services to clients able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each forensic client shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

(c) Every forensic client ~~committed pursuant to this act~~ shall be afforded the opportunity to participate in activities

designed to enhance self-image and the beneficial effects of other treatments or training, as determined by the facility.

(d) Not more than 30 days after admission, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client ~~in a forensic facility~~ refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team ~~at the forensic facility~~ for the appropriate care of the client ~~and the safety of the client or others~~, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written

order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the ~~forensic~~ facility shall petition the court for an order authorizing necessary and essential ~~the~~ treatment for ~~to~~ the client. The order shall allow such treatment for a period not to exceed 90 days following ~~from~~ the date of the entry of the order. Unless the court is notified in writing that the client has provided express and informed consent in writing or that the client has been discharged by the committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client was unable to or ~~has~~ refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, retardation, or autism ~~is mentally ill, retarded, or autistic as defined in this chapter~~, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

a. The client's expressed preference regarding treatment;

b. The probability of adverse side effects;

c. The prognosis without treatment; and

d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to

the client and permission of the client or the client's guardian could not ~~cannot~~ be obtained before provision of the needed treatment.

(4) QUALITY OF TREATMENT.--Each forensic client ~~committed pursuant to this chapter~~ shall receive treatment or training suited to the client's needs, which shall be administered skillfully, safely, and humanely with full respect for the client's dignity and personal integrity. Each client shall receive such medical, vocational, social, educational, and rehabilitative services as the client's condition requires to bring about a return to court for disposition of charges or a return to the community. In order to achieve this goal, the department and the agency shall coordinate their services with each other, the Department of Corrections, ~~is directed to coordinate the services of the Mental Health Program Office and the Developmental Disabilities Program Office with all other programs of the department~~ and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

~~(a)~~ Each forensic client ~~committed pursuant to the provisions of this chapter~~ has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the client or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(a) ~~(b)~~ Each forensic client ~~committed under the provisions of this chapter~~ shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's incoming or outgoing correspondence shall be opened, delayed, held, or

censored by the facility unless there is reason to believe that it contains items or substances that ~~which~~ may be harmful to the client or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. For purposes of this paragraph, the term "correspondence" does ~~shall~~ not include parcels or packages. Forensic facilities may ~~are authorized to~~ promulgate reasonable institutional policies to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client.

(b) ~~(c)~~ If a client's right to communicate is restricted by the administrator, written notice of such restriction and the duration of the restriction shall be served on the client or his or her legal guardian or representatives, and such restriction shall be recorded on the client's clinical record with the reasons therefor. The restriction of a client's right to communicate shall be reviewed at least every 7 days.

(c) ~~(d)~~ Each forensic facility shall establish reasonable institutional policies governing visitors, visiting hours, and the use of telephones by clients in the least restrictive manner possible.

(d) ~~(e)~~ Each forensic client ~~committed pursuant to this chapter~~ shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally and in writing inform each client of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting

forms, shall be posted in plain view.

(e)~~(f)~~ The department's or agency's forensic facilities shall develop policies providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.--A forensic client ~~committed pursuant to this chapter~~ who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or

the client's legal guardian or, if the client is deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a client receiving services ~~pursuant to this chapter~~ has declared an intention to harm other persons~~. When such a declaration has been made~~, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.

6. To the parent or next of kin of a client ~~mentally ill,~~

~~retarded, or autistic person~~ who is committed to, or is being served by, a facility or program when such information is limited to that person's service plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.

(b) Notwithstanding other provisions of this subsection, the department or agency may request or receive from or provide to any of the following entities client information to facilitate treatment, habilitation, rehabilitation, and continuity of care of any forensic client:

1. The Social Security Administration and the United States Department of Veterans Affairs;

2. Law enforcement agencies, state attorneys, defense attorneys, and judges in regard to the client's status;

3. Jail personnel in the jail in ~~to~~ which a client may be housed ~~returned~~; and

4. Community agencies and others expected to provide followup care to the client upon the client's return to the community.

(c) The department or agency may provide notice to any client's next of kin or first representative regarding any serious medical illness or the death of the client.

(d)1. Any law enforcement agency, facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.

2. Any agency or private practitioner who acts in good

faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.

(9) HABEAS CORPUS.--

(a) At any time, and without notice, a forensic client detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such client, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the committing court issue a writ for release. Each client ~~committed pursuant to this chapter~~ shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A client or his or her legal guardian or representatives or attorney may file a petition in the circuit court in the county where the client is committed alleging that the client is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the circuit court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this chapter.

(10) TRANSPORTATION.--

(a) The sheriff shall consult with the governing board of the county as to the most appropriate and cost-effective means of transportation for forensic clients who have been committed for treatment or training. Such consultation shall include, but is not limited to, consideration of the cost to the county of transportation performed by sheriff's ~~department~~ personnel as opposed to transportation performed by other means and, if sheriff's ~~department~~ personnel are to be used for transportation,

the effect such use will have, if any, on service delivery levels of the sheriff's road patrol. After such consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

(b) The governing board of each county is authorized to contract with private transport companies for the transportation of such clients to and from a facility.

(c) Any company that transports a client pursuant to this section is considered an independent contractor and is solely liable for the safe and dignified transportation of the client. Any transport company that contracts with the governing board of a county for the transport of clients as provided for in this section shall be insured and provide no less than $100,000 in liability insurance with respect to the transportation of the clients.

(d) Any company that contracts with a governing board of a county to transport clients shall comply with the applicable rules of the department or agency to ensure the safety and dignity of the clients.

(11) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency that are provided under this chapter shall be ~~by this act is~~ liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this chapter ~~act~~ is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client to or from a facility. However, this subsection does not

relieve any person from liability if he or she is negligent.

Section 4. Subsections (1), (2), (3), (4), and (5) of section 916.1075, Florida Statutes, are amended to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.--

(1) As used in this section, the term:

(a) "Covered person" means an employee," ~~includes any paid staff member,~~ volunteer, or intern of the department or agency; any person under contract with the department or agency; and any person providing care or support to a forensic client on behalf of the department, the agency, or their ~~its~~ providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual

activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between a covered person ~~an employee~~ and a forensic client in the custody of the department or agency, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by a covered person ~~an employee~~.

(2) A covered person ~~An employee~~ who engages in sexual misconduct with a forensic client who resides in a civil or forensic facility commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Such person ~~An employee~~ may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of a forensic ~~the~~ client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to a covered person ~~an employee~~ who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the covered person ~~employee~~ engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) A covered person ~~An employee~~ who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. The covered person ~~Such employee~~ shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and

the persons involved. For an allegation pertaining to a forensic client committed to the agency, the covered person ~~employee~~ shall deliver the report to the supervisor or program director, who shall provide copies to the agency's ~~is responsible for providing copies to the department's~~ inspector general. For an allegation pertaining to a forensic client committed to the department, the covered person shall deliver the report to the supervisor or program director, who shall provide copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

Section 5. Section 916.1081, Florida Statutes, is amended to read:

916.1081 Escape from program; penalty.--

(1) A forensic client who is ~~A defendant~~ involuntarily committed to the department or agency, who is in the custody of the department or agency, and ~~under the provisions of this chapter~~ who escapes or attempts to escape from a civil or forensic facility ~~or program~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who is involuntarily committed to the department or the agency, who is in the custody of the Department of Corrections, and who escapes or attempts to escape from a facility or program commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any punishment of imprisonment imposed under this subsection

shall run consecutive to any former sentence imposed upon the person.

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 Introduction or removal of certain articles unlawful; penalty.--

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of a facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, or to take or attempt to take or send therefrom, any of the following articles, which are ~~hereby~~ declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893;

3. Any firearm or deadly weapon; or

4. Any other item as determined by the department or the agency, and as designated by ~~departmental~~ rule or ~~by the administrator of any facility, and designated~~ by written institutional policies, to be hazardous to the welfare of clients ~~patients~~ or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place that ~~which~~ is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

(2)

(b) These provisions shall be enforced by institutional security personnel ~~as defined in s. 916.106(10)~~ or by a law enforcement officer as defined in s. 943.10.

Section 7. Section 916.1091, Florida Statutes, is amended to read:

916.1091 Duties, functions, and powers of institutional security personnel.--In case of emergency, and when necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a department or agency facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide ~~such~~ protection and security. Under no circumstances shall any ~~such~~ officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 8. Section 916.1093, Florida Statutes, is amended to read:

916.1093 Operation and administration; rules.--

(1) The department or agency may ~~is authorized to~~ enter into contracts and do such things as may be necessary and incidental to assure compliance with and to carry out the provisions of this chapter in accordance with the stated legislative intent.

(2) The department or agency may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Such rules must address the use of restraint and seclusion in forensic facilities and must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data-dissemination procedures and requirements relating to the use of restraint and seclusion, including a requirement that each instance of the use of restraint or seclusion be documented in the facility's client record.

Section 9. Subsection (1) of section 916.111, Florida Statutes, is amended to read:

916.111 Training of mental health experts.--The evaluation of defendants for competency to proceed or for sanity at the time of the commission of the offense shall be conducted in such a way as to ensure uniform application of the criteria enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The department shall develop, and may contract with accredited institutions:

(1) To provide:

(a) A plan for training ~~community~~ mental health

professionals to perform forensic evaluations and to standardize the criteria and procedures to be used in these evaluations;

(b) Clinical protocols and procedures based upon the criteria of Rules 3.210 and 3.216, Florida Rules of Criminal Procedure; and

(c) Training for ~~community~~ mental health professionals in the application of these protocols and procedures in performing forensic evaluations and providing reports to the courts; and

Section 10. Section 916.115, Florida Statutes, is amended to read:

916.115 Appointment of experts.--

(1)~~(a) Annually, the department shall provide the courts with a list of mental health professionals who have completed approved training as experts.~~

~~(b)~~ The court shall ~~may~~ appoint no more than three experts to determine ~~issues of~~ the mental condition of a defendant in a criminal case, including ~~the issues of~~ competency to proceed, insanity, ~~and~~ involuntary ~~hospitalization or~~ placement, and treatment. The panel of experts ~~An expert~~ may evaluate the defendant in jail or in another appropriate local facility or in a facility of the Department of Corrections.

(a)~~(c)~~ To the extent possible, the ~~an~~ appointed experts ~~expert~~ shall have completed forensic evaluator training approved by the department and each shall be ~~either~~ a psychiatrist, licensed psychologist, or physician.

(b) The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

(2) ~~Expert witnesses appointed by the court to evaluate the~~

~~mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses.~~

~~(a)1.~~ The court shall pay for any expert that it appoints by court order, upon motion of counsel for the defendant or the state or upon its own motion. If the defense or the state retains an expert and waives the confidentiality of the expert's report, the court may pay for no more than two additional experts appointed by court order. If an expert appointed by the court upon motion of counsel for the defendant specifically to evaluate the competence of the defendant to proceed also addresses ~~in his or her evaluation~~ issues related to sanity as an affirmative defense, the court shall pay only for that portion of the expert's fees relating to the evaluation on competency to proceed, and the balance of the fees shall be chargeable to the defense.

(a)~~2.~~ Pursuant to s. 29.006, the office of the public defender shall pay for any expert retained by the office.

(b)~~3.~~ Pursuant to s. 29.005, the office of the state attorney shall pay for any expert retained by the office and~~.~~ ~~Notwithstanding subparagraph 1., the office of the state attorney shall pay~~ for any expert whom the office retains and whom the office moves the court to appoint in order to ensure that the expert has access to the defendant.

(c)~~4.~~ An expert retained by the defendant who is represented by private counsel appointed under s. 27.5303 shall be paid by the Justice Administrative Commission.

(d)~~5.~~ An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by

private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

(e) ~~(b)~~ State employees shall be reimbursed for ~~paid~~ expenses pursuant to s. 112.061.

(f) ~~(c)~~ The fees shall be taxed as costs in the case.

(g) ~~(d)~~ In order for an expert to be paid for the services rendered, the expert's report and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 11. Subsections (1), (2), and (3) of section 916.12, Florida Statutes, are amended to read:

916.12 Mental competence to proceed.--

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

(2) Mental health experts appointed pursuant to s. 916.115 ~~An expert~~ shall first determine whether the defendant has a mental illness ~~person is mentally ill~~ and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1) ~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational,~~

~~as well as factual, understanding of the pending proceedings~~. A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action authorized by this chapter or the Florida Rules of Criminal Procedure, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding, the court may commit the defendant or take other action authorized by this chapter or the rules without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.

(3) In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~;~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~;~~

(c) Understand the adversarial nature of the legal process.~~;~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~;~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~;~~

(g) ~~and include in his or her report~~ Any other factor deemed relevant by the expert.

Section 12. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.--

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed~~, pursuant to the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness ~~is mentally ill~~ and because of the mental illness:

1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or ~~and~~

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to

treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment to the department under the provisions of this chapter, may be committed to the department, and the department shall retain and treat the defendant. No later than 6 months after the date of admission and ~~or~~ at the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

Section 13. Section 916.145, Florida Statutes, is amended to read:

916.145 ~~Adjudication of incompetency due to mental illness;~~ Dismissal of charges.--The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

Section 14. Section 916.15, Florida Statutes, is amended to

read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.--

(1) The determination of whether a defendant is not guilty by reason of insanity shall be determined in accordance with Rule 3.217, Florida Rules of Criminal Procedure.

(2) ~~(1)~~ A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the defendant has a mental illness ~~is mentally ill~~ and, because of the illness, is manifestly dangerous to himself or herself or others.

(3) ~~(2)~~ Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall retain and treat such defendant. No later than 6 months after the date of admission, prior to the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant no longer meets the criteria for continued commitment placement, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(4) ~~(3)~~ In all proceedings under this section ~~subsection~~, both the defendant and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the administrator's designee as well as by the state and the defendant. The defendant

shall have the right to counsel at any such hearing. In the event that a defendant is determined to be indigent pursuant to s. 27.52, the public defender shall represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 15. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction over ~~in the case of~~ any defendant involuntarily committed due to a determination of incompetency ~~hospitalized as incompetent~~ to proceed due to mental illness or ~~because of~~ a finding of not guilty by reason of insanity pursuant to this chapter. The ~~No such~~ defendant may not be released except by order of the committing court. An ~~The~~ administrative hearing examiner does not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing commitment ~~hospitalization~~ or release of any defendant involuntarily committed ~~admitted~~ pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

Section 16. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, ~~The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed or~~

~~not guilty by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment.~~ the committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15 based upon an approved plan for providing appropriate outpatient care and treatment. Upon a recommendation that outpatient treatment of the defendant is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or

that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary commitment under s. 916.13 or s. 916.15 ~~treatment~~.

(3) If at any time it is determined after a hearing that the defendant who has been conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 17. Section 916.301, Florida Statutes, is amended to read:

916.301 Appointment of experts.--

(1) All evaluations ordered by the court under this part must be conducted by qualified experts who have expertise in evaluating persons with retardation or autism. The agency ~~department~~ shall maintain and provide the courts annually with a list of available retardation and autism professionals who are appropriately licensed and qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when appointing experts and ordering evaluations under this part ~~for defendants suspected of being retarded or autistic~~.

(2) If a defendant's suspected mental condition is retardation or autism, the court shall appoint a panel of experts consisting of: ~~two experts, one of whom must be the developmental~~

~~services program of the department, each of whom will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.~~

(a) ~~(3)~~ At least one, or at the request of any party, two experts ~~the court may appoint one additional expert~~ to evaluate ~~the defendant. The expert appointed by the court will evaluate~~ whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(b) ~~(4) The developmental services program shall select~~ A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional, with experience in working with persons with retardation or autism ~~to evaluate the defendant~~.

1. ~~(a)~~ The psychologist shall evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is incompetent to proceed due to retardation or autism.

2. ~~(b)~~ The social service professional shall provide a social and developmental history of the defendant.

~~(5) All evaluations ordered by the court must be from qualified experts with experience in evaluating persons with retardation or autism.~~

(3) ~~(6)~~ The panel of experts may examine the defendant in jail, in another appropriate local facility, in a facility of the Department of Corrections, or on an outpatient basis.

(4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as

evaluators and as witnesses, which shall be paid by the court. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 18. Subsections (1), (2), and (3) of section 916.3012, Florida Statutes, are amended to read:

916.3012 Mental competence to proceed.--

(1) A defendant whose suspected mental condition is retardation or autism is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against the defendant.

(2) ~~The~~ Experts in retardation or autism appointed pursuant to s. 916.301 shall first consider whether the defendant meets the definition of retardation or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed as described in subsection (1)~~; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings~~.

(3) In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant.~~,~~

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.~~,~~

(c) Understand the adversarial nature of the legal process.~~,~~

(d) Disclose to counsel facts pertinent to the proceedings at issue.~~,~~

(e) Manifest appropriate courtroom behavior.~~; and~~

(f) Testify relevantly.~~,~~

(g) ~~and include in their report~~ Any other factor deemed relevant by the experts.

Section 19. Section 916.302, Florida Statutes, is amended to read:

916.302 Involuntary commitment of defendant determined to be incompetent to proceed ~~due to retardation or autism~~.--

(1) CRITERIA.--Every defendant who is charged with a felony and who is adjudicated ~~found to be~~ incompetent to proceed due to retardation or autism~~, pursuant to this chapter and the applicable Florida Rules of Criminal Procedure,~~ may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant has retardation or autism ~~is retarded or autistic~~;

(b) There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate; and

(d) There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2) ADMISSION TO A FACILITY.--

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed due to retardation or autism, and who meets the criteria for involuntary commitment to the agency ~~department~~ under the provisions of this chapter, shall be committed to the agency ~~department~~, and the agency ~~department~~ shall retain and provide appropriate training for ~~serve~~ the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a forensic ~~secure~~ facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism.

(c) The agency ~~department~~ may transfer a defendant from a

designated forensic ~~secure~~ facility to another designated forensic ~~secure~~ facility and must notify the court of the transfer within 30 days after the transfer is completed.

(d) The agency ~~department~~ may not transfer a defendant from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~ facility without first notifying the court, and all parties, 30 days before the proposed transfer. If the court objects to the proposed transfer ~~to a nonsecure facility~~, it must send its written objection to the agency ~~department~~. The agency ~~department~~ may transfer the defendant unless it receives the written objection from the court within 30 days after the court's receipt of the notice of the proposed transfer.

(3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--

(a) If a defendant has ~~is~~ both mental retardation or autism ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to a civil or forensic ~~the~~ facility ~~or program~~ most appropriate to address the symptoms that ~~which~~ are the cause of the defendant's incompetence.

(b) Transfer from one civil or forensic facility ~~or program~~ to another civil or forensic facility ~~or program~~ may occur when, in the department's and agency's judgment, it is in the defendant's best treatment or training interests. The department and agency shall submit an evaluation and justification for the transfer to the court. The court may consult with an outside expert if necessary. Transfer will require an amended order from the committing court.

Section 20. Section 916.3025, Florida Statutes, is amended

to read:

916.3025 Jurisdiction of committing court.--

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed due to retardation or autism and ordered into a forensic ~~secure~~ facility designated by the agency ~~department~~ for ~~retarded or autistic~~ defendants who have mental retardation or autism. A ~~No~~ defendant may not be released except by the order of the committing court. An administrative hearing examiner does not have jurisdiction to determine issues of continuing commitment or release of any defendant involuntarily committed pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.304. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

(3) The committing court shall consider a ~~the~~ petition to involuntarily admit a defendant whose charges have been dismissed to residential services provided by the agency ~~department's developmental services program a person whose charges have been dismissed,~~ and, when applicable, to continue secure placement of such person as provided in s. 916.303. The committing court shall retain jurisdiction over such person so long as he or she remains in secure placement or is on conditional release as provided in s. 916.304. However, upon request the court may transfer continuing jurisdiction to the court in the circuit where the defendant resides. The defendant may not be released from an order for secure placement except by order of the court.

Section 21. Section 916.303, Florida Statutes, is amended to read:

916.303 Determination of incompetency due to retardation or autism; dismissal of charges.--

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges may be refiled by the state if ~~against the defendant are dismissed without prejudice to the state to refile the charges should~~ the defendant is ~~be~~ declared competent to proceed in the future.

(2)~~(a)~~ If the charges are dismissed and if the defendant is considered to lack sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for his or her well-being or is likely to physically injure himself or herself or others if allowed to remain at liberty, the agency ~~department~~, the state attorney, or the defendant's attorney shall ~~may~~ apply to the committing court to involuntarily admit the defendant to residential services pursuant to s. 393.11.

(3)~~(b)~~ If the defendant is considered to need involuntary residential services for reasons described in subsection (2) ~~under s. 393.11~~ and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential

facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, ~~then~~ the agency ~~person or entity filing the petition under s. 393.11~~, the state attorney, or the defendant's counsel may request~~, the petitioning commission, or the department may also petition~~ the committing court to continue the defendant's placement in a secure facility ~~or program~~ pursuant to this part ~~section~~. Any placement so continued under this subsection must be ~~defendant involuntarily admitted under this paragraph shall have his or her status~~ reviewed by the court at least annually at a hearing. The annual review and hearing shall determine whether the defendant continues to meet the criteria described in this subsection ~~for involuntary residential services~~ and, if so, whether the defendant still requires involuntary placement in a secure facility ~~or program because the court finds that the defendant is likely to physically injure others as specified in s. 393.11~~ and whether the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Notice of the annual review and review hearing shall be given to the state attorney and ~~to~~ the defendant's attorney. In no instance may a defendant's placement in a secure facility ~~or program~~ exceed the maximum sentence for the crime for which the defendant was charged.

Section 22. Section 916.304, Florida Statutes, is amended to read:

916.304 Conditional release.--

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of

any defendant who has been found to be incompetent to proceed due to retardation or autism, based on an approved plan for providing ~~continuing~~ community-based training. The committing criminal court may order a conditional release of any defendant to a civil facility in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including recommendations from qualified professionals, may be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan must ~~shall~~ include:

(a) Special provisions for residential care and adequate supervision of the defendant, including recommended location of placement.

(b) Recommendations for auxiliary services such as vocational training, psychological training, educational services, leisure services, and special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the courts regarding the defendant's compliance with the conditions of the release and progress in training, with copies to all parties.

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified,

the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. With notice to the court, the agency may detain a defendant in a forensic facility until the hearing occurs. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be committed ~~returned~~ to a forensic facility ~~involuntary residential services of the department~~ if it is found, after the appointment and report of experts, that the defendant meets the criteria for placement in a forensic facility ~~involuntary residential services~~.

(3) If at any time it is determined after a hearing that the defendant conditionally released under subsection (1) no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 23. Subsection (1) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon a ~~mentally retarded~~ defendant with mental retardation prohibited.--

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities ~~Department of Children and Family~~

~~Services~~. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities ~~Department of Children and Family Services~~ shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

Section 24. Paragraphs (d), (e), (g), and (h) of subsection (1), subsections (2), (3), and (4), paragraph (b) of subsection (5), and paragraph (a) of subsection (6) of section 985.223, Florida Statutes, are amended to read:

985.223 Incompetency in juvenile delinquency cases.--

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities ~~Developmental Disabilities Program Office within the Department of Children and Family Services~~ to

examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

(g) Immediately upon the filing of the court order finding a child incompetent to proceed, the clerk of the court shall notify the Department of Children and Family Services and the Agency for Persons with Disabilities and fax or hand deliver to the department and to the agency ~~of Children and Family Services~~ a referral packet that ~~which~~ includes, at a minimum, the court order, the charging documents, the petition, and the court-appointed evaluator's reports.

(h) After placement of the child in the appropriate setting, the Department of Children and Family Services in consultation with the Agency for Persons with Disabilities, as appropriate, must, within 30 days after placement of ~~the Department of Children and Family Services places~~ the child, prepare and submit to the court a treatment or training plan for the child's restoration of competency. A copy of the ~~treatment~~ plan must be served upon the child's attorney, the state attorney, and the attorneys representing the Department of Juvenile Justice.

(2) A child ~~who is mentally ill or retarded,~~ who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to

the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism ~~is mentally ill or retarded~~ and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism ~~is mentally ill~~ and because of the mental illness, mental retardation, or autism~~; or the child is mentally retarded and because of the mental retardation~~:

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including

treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate.

(4) A child who is determined to have mental retardation or autism ~~be mentally ill or retarded~~, who has been adjudicated incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services~~,~~ and receive treatment or training ~~the Department of Children and Family Services must treat or train the child~~ in a secure facility or program that ~~which~~ is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains competency, then custody, case management, and supervision of the child will be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

(a) A child adjudicated incompetent due to mental retardation or autism may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~retarded~~ children with mental retardation or autism.

(b) A child adjudicated incompetent due to mental illness may be ordered into a secure program or facility designated by the Department of Children and Family Services for ~~mentally ill~~ children have mental illnesses.

(c) Whenever a child is placed in a secure residential facility, the department will provide transportation to the secure residential facility for admission and from the secure

residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the~~. The Department of Children and Family Services must send the proposed discharge~~ plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(6)(a) If a child is determined to have mental illness,

mental retardation, or autism ~~be mentally ill or retarded~~ and is found to be incompetent to proceed but does not meet the criteria set forth in subsection (3), the court shall commit the child to the Department of Children and Family Services and shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. The purpose of the treatment or training is the restoration of the child's competency to proceed.

Section 25. Paragraph (b) of subsection (14) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.--

(14)

(b) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to exceed 20 years, with a private provider to finance, design, and construct a forensic treatment facility, as defined in s. 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects of daily operations within the forensic treatment facility. The selected contractor is authorized to sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the forensic treatment facility. This paragraph expires July 1, 2006.

Section 26. Paragraph (r) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.--

(3) EXEMPTIONS.--Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(r) For beds in state mental health treatment facilities operated under s. 394.455(30) and state mental health forensic facilities operated under chapter 916 ~~s. 916.106(8)~~.

Section 27. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of

alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and

exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial

school, or any local governmental entity that licenses child care facilities.

Section 28. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of

alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective

licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 29. This act shall take effect upon becoming a law.